The New Wayne County Court House.

Dedicatory Exercises.

By the Detroit Bar Association.

October Eleventh, One Thousand Nine Hundred and Two.

George W. Bates,
Attorney and Counsellor at Law.
32 & 33 BUHL BUILDING
Detroit, Mich.

22, April, 1904.

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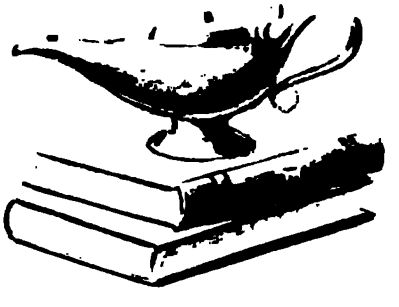
Dedicatory Exercises

THE NEW WAYNE COUNTY COURT HOUSE

DETROIT. MICHIGAN
OCTOBER ELEVENTH
IN THE YEAR OF OUR LORD
ONE THOUSAND NINE
HUNDRED AND TWO
BY THE DETROIT BAR
ASSOCIATION.



The New Wayne County Court House

Dedication of the New Wayne County Court House, Detroit, Michigan, October eleventh in the year of our Lord one thousand nine hundred and two, by the Detroit Bar Association, together with an Account of the development of the Judicial System in Michigan as related to Wayne County, and of Buildings formerly occupied by the Wayne Circuit Court.

Incidents of the Construction of the New Building and Reminiscences of the Bench and Bar of Detroit.

Printed in Detroit, Michigan, by the Detroit Bar Association.

In the year of our Lord
one thousand nine hundred and three.

Publication Committee:

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THE OLD STATE CAPITOL.

NEW WAYNE COUNTY COURT HOUSE.

A HISTORICAL SKETCH.

The Judicial Systems of Michigan Territory and State So Far as They Relate to Wayne County, Including the Organization and History of the Wayne Circuit Court.

The judicial officers who have sat upon the Bench in the territory that is now included in the County of Wayne have, in successive periods, been constituted under a number of different systems. The first period was from 1796 to 1805, during most of which time Northern Ohio, Indiana, Illinois, Michigan and the Eastern part of Wisconsin, were included in the County of Wayne. The judicial system of the Northwest Territory was operative over the whole area, and included the Supreme Court, Common Pleas, Probate and Orphan Courts, and Quarter Sessions. Annual sessions of the Supreme Court were held in Detroit by one of the Territorial Judges. The Supreme Court Judges, in addition to judicial duties, also joined with the Territorial Governor in the passage of legislative acts.

In 1805 the Territory of Michigan was organized under the anomalous rule of the Governor and Judges, the whole Territory being at first included in the County of Wayne. In the Governor and three Territorial Judges all legislative powers were centered, while the three Judges constituted the Supreme Court, thus having the unique power of passing upon the validity of laws which they had shared in adopting. The Judges were appointed by the President and confirmed by the United States Senate. Those first appointed were Frederick Bates, a native of Ohio, but then a resident of Michigan, and postmaster at Detroit; Augustus B. Woodward, a native of

Virginia, but then a resident in the District of Columbia; and Samuel Huntington, of Ohio. They were all confirmed March 1, 1805. Mr. Huntington, however, declined the honor, and on the 23d of December in the same year John Griffin, of Indiana, was appointed in his place. The Board, in its legislative capacity, was a very inharmonious body, and Judge Bates, disliking the association, was, in 1806, at his own request, relieved of his position, and appointed Territoral Secretary of Louisiana. In February, 1807, John Coburn, of Kentucky, was nominated and confirmed as Judge Bates' successor, but never accepted the position. Then Return Jonathan Meigs, Jr., of Ohio, was nominated but not confirmed. In April, 1808, James Witherell, of Vermont, was nominated. He was promptly confirmed and the court remained without further change till its reorganization in 1824.

In addition to the Supreme Court, provision was early made for Justice Courts, and for a County Court of Common Pleas for Wayne County. The latter tribunal was composed of from three to five judges, appointed by the Governor, and not always men of legal training. In 1807 the Territory was divided into the three judicial districts of Erie, Huron and Detroit, and Michilimackinac. Provision was made for a court in each district, to consist of a chief justice and two associate justices, living in the district, commissioned by the Governor, and holding office during good behavior. They were empowered to fix prison limits, to make assessments for meeting district charges, summarily determine all controversies between "inhabitants" and Indians, and decide, on petition, all disputes between masters and servants as to indentures and wages. But the Governor and Judges were quite vacillating in their legislation. These provisions were repealed in 1808, were re-enacted in 1809, and the court was abolished altogether in 1810.

For five years there was no intermediate court, but in 1815 a County Court was established, to consist of a Chief and two Associate Justices, who were to sit at Detroit until there should be more than one county, and who were to have exclusive jurisdiction in all cases where the claim exceeded a Justice's jurisdiction, and did not exceed $1,000. Until 1818 final appeal lay to this court from Justices of the Peace. It was

then given chancery jurisdiction, and the Governor was authorized to appoint masters in chancery.

Between 1817 and 1824 eleven new counties were organized, and in the latter year changes were made, out of which eventually grew the Circuit Courts of the present day. The judicial, legislative, and executive departments of government were separated, and the Supreme Court was reorganized. James Witherell was appointed Chief Justice, and Solomon Sibley, John Hunt and James Duane Doty, Associate Justices. Judge Doty had original jurisdiction in Michilimackinac, Crawford and Brown counties, including the Upper Peninsula of Michigan, and most of the territory now included in the State of Wisconsin. Judges Witherell, Sibley and Hunt held court in the Lower Peninsula, and were obliged to hold annual terms in each of the counties of Wayne, Monroe, Oakland, Macomb, and St. Clair. In 1825, Circuit Courts were established by name, but they were still held by the Judges of the Supreme Court. The Circuit Court was given original jurisdiction in all civil actions at law where the demand exceeded $1,000, of actions of ejectment, of all criminal cases punished capitally, and of all cases not exclusively cognizable by other courts; concurrent jurisdiction with County Courts in civil cases beyond the jurisdiction of Justices of the Peace, and of criminal offenses not capital; also appellate jurisdiction from County Courts. Another act was passed in 1827, re-enacting the essential provisions of the acts of 1824 and 1825, and providing for the additional Circuits of Lenawee and Washtenaw. With but slight additional changes the judicial system remained as here stated throughout the Territorial days of Michigan.

There were but few changes in the personnel of the Territorial Supreme Court after 1824. In 1827 Justice Hunt died and Henry Chipman, of Vermont, was appointed to succeed him. In 1828 William Woodbridge succeeded Witherell as Chief Justice. In 1832, for political reasons, President Jackson appointed George Morell, Ross Wilkins and David Irvine in place of Justices Woodbridge, Chipman and Doty. From this time till Michigan was admitted as a State in 1837, the Court consisted of Chief Justice Morell, and Associates Sibley, Wilkins and Irwin.

It has been said that the Bar of Michigan during this period was not surpassed by that of any State in the Union, and the judges of this Court were all men of strong character, and, even aside from their judicial position, were of great prominence in the affairs of the Territory whose destiny they helped to shape.

James Witherell was a native of Mansfield, Mass., born June 16, 1759. When only 16 years of age he enlisted as a private in the Revolutionary Army, and served through the whole eight years of the war. He then settled in Connecticut, and studied medicine, and in 1787 took up its practice in Rutland, Vermont. He afterwards turned his attention to the law, and served on the Bench and in the Legislature of that State, representing it also for one term in Congress. April 23, 1808, he was appointed one of the Judges of Michigan Territory. When the War of 1812 broke out he took command of the band of local militia, known as the Legion, as its Colonel. On the signing of the capitulation by General Hull he refused to surrender his corps, but told his men to disband and go home. He was himself, however, taken and held as a prisoner of war until 1814, when he was paroled and returned to his judicial duties. When his term as presiding judge expired in 1828, he became Territorial Secretary, and remained in that position till the retirement of Governor Cass in 1831. He died in Detroit, January 9, 1838. He was six feet tall, erect in form and of very positive character.

William Woodbridge was born in Norwich, Conn., in 1780, but followed his parents to Marietta, Ohio, in 1791. For the next fifteen years he spent his time alternately in Connecticut and Ohio, studying law at the famous Litchfield law school in the former State. In 1806 he commenced the practice of law in Ohio, and during the next eight years he was prosecuting attorney of his county six years, member of the lower house of the Legislature one year, and State Senator six years. In 1814 he came to Michigan as Territorial Secretary, and continued in that position till 1828 with the exception of one year, when he represented the Territory as delegate in Congress. During more than two years of this period he was Acting Governor in the absence of Governor Cass. He was in the Constitutional Convention in 1835, and in the State Senate

in 1838-9. From 1828 till 1832 he was Presiding Judge of the Supreme Court. In 1839 he was elected Governor of the State, and from 1841 till 1847 he was United States Senator. He was prominently mentioned for the Whig nomination for the Vice-Presidency in 1848, but did not encourage the use of his name. He continued in the practice of law and in public activities almost up to the time of his death in 1861. He was of an irascible disposition, and did not possess the highest type of judicial mind, but he was an able lawyer, and even before he came to Michigan had gained a high reputation in Ohio and Western Virginia.

Solomon Sibley has been characterized as "one of the wisest and best men that ever lived in Michigan." He was born in Sutton, Mass., October 7, 1769, and in 1797 came to Detroit, where for over two score years he had a large share in public affairs. In 1799 he was elected to represent Wayne County in the General Assembly of the Northwest Territory, and was largely instrumental in securing the act incorporating the town of Detroit in 1802. He was the first Mayor of the city under its first charter in 1806. He was Auditor of the Territory from 1814 to 1817, United States District Attorney from 1815 to 1823, delegate in Congress from 1821 to 1823, and Justice of the Supreme Court, through four changes of the National Administration, from 1824 to 1837. He died April 4, 1840.

James Duane Doty was born at Salem, Washington County, N. Y., in 1799, came to Detroit in 1818, was admitted to the Bar in 1819, and was appointed Secretary of the Territorial Supreme Court the same year. In 1820 he accompanied Governor Cass, Henry R. Schoolcraft and others on their expedition to the Indian tribes in the Lake Superior region. He continued Judge of the Supreme Court for the Northern District of Michigan, holding court at Green Bay till 1832. Five years later, Wisconsin then having been organized as a separate Territory, he was elected to its Legislative Council. He was delegate in Congress from 1838 to 1841, and was appointed Governor of the Territory in the latter year. He was a member of the Constitutional Convention in 1846, Congressman from 1849 to 1853, and at a later period, by appointment of President Lincoln, he was Commissioner of Indian Affairs and Governor of Utah.

The four above named were the most conspicuous figures among the men who were upon the Bench, and who were in other public affairs as well, during the decade which marked the transition of Detroit from a frontier settlement, three-fourths French, to the government seat of a commonwealth, typically American; a decade in which the foundations of our modern judicial system were securely laid. Of those who came in the next decade, the most prominent was George Morell, who was born at Lenox, Mass., March 22, 1786. He received his preliminary education at Lenox Academy and Williams College, and studied law at Troy, N. Y., having as fellow students, William L. Marcy and Chancellor Walworth. He was in the militia of Otsego County from 1811 till 1832, and held both legislative and judicial positions in that county. He was appointed one of the Territorial Judges of Michigan, February 26, 1832, and when the Territory was admitted as a State he was elected to the corresponding place in the State Court, becoming Chief Justice in 1842. His decisions form an important part of the earlier Michigan reports. He was Presiding Judge of the Circuit in which Wayne County was situated from 1837 till 1844, and died in Detroit, March 8, 1845.

Of the other Judges who were upon the Bench during the early period, John Hunt, a native of Massachusetts, came to Michigan in 1819. He at once commenced taking an active part in politics; was Trustee of the town of Detroit in 1820, and was manager of Austin E. Wing's Congressional canvass during the exciting campaign of 1823. He was appointed to the Bench in 1824, and died in 1827.

Henry Chipman was born in Vermont, July 25, 1784, and graduated at Middlebury College in 1803. He was admitted to the Bar in that State, but practiced nearly twenty years in Charleston and Walterborough, South Carolina. He moved to Detroit in 1824, and for three years was one of the publishers of the *Michigan Herald*. He was on the Supreme Bench from 1827 to 1832, and was active in the practice of law, in Whig politics, and in public affairs for thirty years after that.

Ross Wilkins was born in Pittsburgh, Pa., February 19, 1799, graduated at the age of 18 from Carlisle College, studied and practiced law in his native city until 1832, when he was

THE OLD CITY HALL. WOODWARD AVE.

appointed to the Territorial Supreme Court in Michigan, remaining in that position till 1837. In the latter year he was elected Recorder of the City of Detroit. His chief reputation, however, was gained in the United States District Court, to which he was appointed Judge in 1838, remaining on the Bench till 1870.

David Irwin, like his predecessor, was active in politics, though more in Wisconsin than in Michigan. He remained on the Bench of the latter Territory, holding court at Green Bay, from 1832 till 1836, when Wisconsin became a separate Territory, and he was appointed Associate Justice of its Supreme Court. He remained in that position till the Territory became a State, when he retired from the Bench, but remained in active public life till his death in 1870.

The Michigan Constitution of 1835 provided for a Supreme Court, and gave the Legislature authority to establish courts of inferior jurisdiction. In accordance with this authority, the Legislature, at its first session, passed an act to organize the Supreme and Circuit Courts, and another to establish a separate Court of Chancery. The first of these acts provided that the Supreme Court should consist of three Judges, who in addition to their duties in this Court, were required to perform the duties of Circuit Judges, aided by two Associate Judges, elected by the people, in each county. For the purpose of the last mentioned Courts, the State was divided into three circuits, of which the first comprised the Counties of Wayne, Macomb, St. Clair, Lapeer, Michilimackinac and Chippewa. The Circuit Courts were given the same powers and jurisdiction as under the latest Territorial laws, except in matters of chancery. It was also provided that one of the Judges should reside in each Circuit, and in case of the non-election or non-attendance of the Associate Justices, the Supreme Court Justice might hold Circuit Court alone. In actual practice, in many cases, the Associate Justices took very little part in the proceedings. Under this act George Morell was the Supreme Court Judge assigned to the Circuit in which Wayne County was situated from 1837 to 1844. He was followed by Daniel Goodwin, 1844 to 1847, and he by Warner Wing, from 1847 till 1851. The Associate Justices in Wayne County from 1837 to 1847 were as follows: Cyrus Howard and Charles Moran,

1837 to 1841; R. T. Elliott and Eli Bradshaw, 1841; Eli Bradshaw and Ebenezer Farnsworth, 1842 to 1845; J. H. Bagg and J. Gunning, 1845 to 1847.

The act establishing a Court of Chancery was approved March 26, 1836, and took effect July 4 of the same year. It authorized the Governor, with the consent of the Senate, to appoint a Chancellor for seven years, gave him original exclusive jurisdiction in all matters properly cognizable by a Court of Chancery, conferred upon the Court all the powers and jurisdiction before that granted to the Supreme Court in Chancery matters, and transferred to the new Court all chancery proceedings then pending in the Supreme and Circuit Courts. It also ordained that the decrees of the Chancellor should have the same operation, force and effect as judgments at law, arranged for two terms in each year in each Circuit, and provided for appeals from the Chancery to the Supreme Court. It also gave the Court of Chancery the power to grant divorces. and to decree who should have charge of minor children in case of such divorce, and forbade the Chancellor to practice as attorney, solicitor or counsellor in any Court in the State. The salary was fixed at the modest sum of $1,500 a year. The act creating this Court was repealed by the Revision of 1846.

The only incumbents of the office of Chancellor were Elon Farnsworth, July 4, 1836, to July 4, 1843, and Randolph Manning, from the latter date till March 1, 1847. Chancellor Manning was afterwards, for many years, a Justice of the State Supreme Court, but Chancellor Farnsworth's judicial reputation was made entirely in this Court. He was born in Woodstock, Vermont, February 2, 1799, removed to Detroit in 1822, began the study of law with Judge Sibley, and after being admitted to the Bar went into partnership with Judge Goodwin. He was possessed of an extraordinary memory, a methodical habit, and great industry. Chancellor Kent, in the fourth volume of his Commentaries, says of him: "The administration of justice in equity in Michigan, under Chancellor Farnsworth, was enlightened and correct, and does distinguished honor to the State." Chancellor Farnsworth was also prominent in business and political affairs, was a member of the first Legislative Council of the Territory, was the Democratic candidate for Governor against Wm. Wood-

bridge, in 1839, and was one of the Regents of the State University almost continuously from 1832 till 1858. He died March 24, 1877.

By the Revision of 1846 chancery powers were conferred upon the several Circuit Courts, and the other general provisions of the Act of 1836 were rearranged, but not greatly modified. Since 1847 the jurisdiction of the Circuit Courts has been essentially the same as at present, though their form of organization was materially changed by the Constitution of 1850. The sections of Article VI. of that instrument which related to these courts, provided that the State should be divided into circuits, in each of which the electors should choose one Circuit Judge, to hold office for the term of six years; that the Legislature might alter the limits of circuits or increase the number of the same, but no alteration or increase should have the effect to remove a judge from office; that the judges should receive a salary payable quarterly, and should be ineligible to any other than a judicial office during the term for which they were elected, and for one year thereafter; that Circuit Court should be held at least twice in each year in every County in the State, and four times in each County having ten thousand inhabitants; and that Circuit Judges might hold court for each other, and should do so when required by law. All these provisions remain unchanged, except that amendments have been made permitting the election of more than one judge in the circuits in which the cities of Detroit, Grand Rapids and Saginaw are situated. The clause of the Constitution relating to jurisdiction is as follows: "The Circuit Courts shall have original jurisdiction in all matters, civil and criminal, not excepted in this Constitution, and not prohibited by law; and appellate jurisdiction from all inferior courts and tribunals, and a supervisory control of the same. They shall also have power to issue writs of habeas corpus, mandamus, injunction, quo warranto, certiorari, and other writs necessary to carry into effect their orders, judgments and decrees, and give them a general control over inferior courts and tribunals, within their jurisdictions."

The Constitution also provided that for the term of six years, and until otherwise provided by law, the judges of the several Circuit Courts should be judges of the Supreme Court,

four of whom should constitute a quorum. The judicial system was, in fact, reversed for the time, by choosing circuit judges with Supreme Court powers, instead of Supreme Court judges with Circuit Court duties.

Under this constitutional requirement the Legislature of 1851 passed an act dividing the State into eight judicial circuits, commencing the numbering at the southeast corner of the State. The first circuit comprised the counties of Monroe, Lenawee and Hillsdale; the second, Branch, St. Joseph, Cass and Berrien; and the third the County of Wayne. All of the other circuits have since been changed by erecting one or more counties into new circuits, but the third has remained unchanged in area, except that Cheboygan and Emmet counties were, for short periods, attached to it.

The law provided that before the first of November, in each second year, the judge of each circuit should appoint the terms of Court in each County, which should remain unchanged for two years; but that, in addition special terms of Court might be called in the discretion of the judge. By this, and a subsequent act, the respective jurisdictions and powers of the Supreme and Circuit Courts were carefully and minutely defined.

The Circuit Judges elected to perform the double duties prescribed by these two acts, were Warner Wing, Abner Pratt, Samuel T. Douglas, Charles W. Whipple, Sanford M. Green, George Martin, John S. Goodrich and David Johnson, Judge Douglas representing the third, or Wayne Circuit. By Act of February 16, 1857, provision was made for the election of separate Supreme Court Judges, as contemplated by the Constitution of 1850. George Martin, Randolph Manning, Isaac P. Christiancy and James V. Campbell were elected, and on the first of January, 1858, the separation of Supreme and Circuit Court duties became complete.

The jurisdiction of the Circuit Courts was defined by law as follows: "The said Circuit Courts, within and for their respective counties, shall have and exercise original and exclusive jurisdiction of all civil actions and remedies of whatever name and description, and of all prosecutions in the name of the people of this State, for crimes, misdemeanors, offenses and penalties, except in cases where exclusive or concurrent

jurisdiction shall be given to, or possessed by, some other Court or Tribunal, in virtue of some statutory provision, or of the principles and usages of law, and shall have such appellate jurisdiction and powers as may be provided by law; and the said Courts shall also have and exercise, within and for their respective counties, all the powers usually possessed and exercised by Courts of record at the common law and in equity, subject to such modifications as may be provided by the laws of this State, for the full exercise of the jurisdiction hereby conferred."

The Circuit Courts were given power to make their own rules for regulating practice and conducting business until such time as the Supreme Court should prepare and submit a uniform code of rules; to order a change of venue in any case; to hear and determine cases submitted by agreement; to reserve questions of law for the decision of the Supreme Court; to grant writs of supersedeas or prohibition in vacation for cause shown, and to make all orders necessary or proper for carrying into effect the jurisdiction vested in such Court.

By Acts four and five of the Special Session of 1858 the Revised Statutes of 1846, and subsequent Acts, were amended so as to adapt them to the new organization, and the number of circuits was increased to ten. With the passing away of the old system Judge Douglas resigned and Benjamin F. H. Witherell was first appointed, and afterwards elected, to the Bench under the new system. He was a son of the James Witherell, who came from Vermont in 1808, as one of the Judges of the first Territorial Court. B. F. H. Witherell remained on the Bench till his death in 1866. He was succeeded by Charles I. Walker, who held the office, by appointment, less than two years, resigning in 1868. Henry B. Brown was appointed to the vacancy, holding the position until the November election placed Jared Patchin on the Circuit Bench. Judge Patchin was re-elected for a full term at the April election in 1869.

At the regular spring election in 1875 Cornelius J. Reilly was elected Circuit Judge, but resigned November 3, 1879, when Fitzwilliam Henry Chambers received the office by appointment. In April, 1881, Judge Chambers was elected for the full succeeding term.

At the April election in 1881 a constitutional amendment was adopted permitting the appointment of more than one judge "in the circuit in which the City of Detroit is, or may be, situated." The vote on the amendment was 53,840 for, and 6,628 against. The Legislature thereupon passed an act providing for two additional judges, and at the election in November, 1882, William Jennison and John J. Speed were chosen.

The Legislature of 1887 made provision for still another judge, and at the regular April election in that year, the following were elected for the full term: George Gartner, Henry N. Brevoort, Cornelius J. Reilly, George S. Hosmer. At the same election Wm. Look was chosen to serve from May 1, 1887, to January 1, 1888.

By the Legislature of 1891 a fifth judge was added, and Robert E. Frazer was appointed. At the spring election in 1893 the following were chosen for full terms: Robert E. Frazer, William L. Carpenter, Willard M. Lillibridge, Joseph W. Donovan, George S. Hosmer.

At the spring election in 1899 the following were chosen: Robert E. Frazer, William L. Carpenter, Joseph W. Donovan, Morse Rohnert, George S. Hosmer. The Legislature of 1899 provided for a sixth judge, and Byron S. Waite received the temporary appointment; but at the election in April, 1901, Flavius L. Brooke was elected to this place. In November, 1902, William L. Carpenter, having been elected Judge of the Supreme Court, resigned from the Circuit Bench and Henry A. Mandell, having been designated as the choice of the Bar, was appointed to fill the vacancy.

THE FIRST COUNTY BUILDING.

VARIOUS COURT BUILDINGS.

The Different Buildings That Have Been Occupied by the Wayne Circuit Court.

The buildings occupied by the Wayne Circuit Court, whose origin, jurisdiction and personnel have thus been briefly sketched, have not been numerous. Under Territorial rule the sessions of the Court were held in the Old Council House, and in the Old Capitol Building, on what is now Capitol square. The Court met in the City Hall from 1836 to 1844, and then for one year in the Williams building, on the corner of Jefferson Avenue and Bates Street. From there it moved into the County Building at the southeast corner of Congress and Griswold Streets. This was a two-story brick structure, fronting 32 feet on Griswold Street and 80 feet on Congress. As will be seen by the accompanying illustration, it was neither imposing nor in any way pretentious. The first story was devoted to County Offices, and a Court room was provided above. It was turned over by the contractors to the County Auditors on Monday, July 9, 1845, and at ten o'clock on that day the District Court for the County commenced its sessions therein. At a meeting of members of the Bar, held just previous to the opening of Court, Prosecuting Attorney Alexander C. Buel offered the following resolution, which was unanimously adopted:

Resolved, That the thanks of the Bar of Detroit be tendered to Messrs. William B. Hunt and John Farrer, the committee appointed to superintend the construction of the New Court House of this County, and also to Messrs. Henry E. Perry and Charles Jackson, contractors and builders, for its tasteful and commodious arrangement, neatness and simplicity of style, and its permanent and substantial character as a public and fireproof building.

Notwithstanding the complimentary phrasing of this resolution the Court room was not, according to modern notions, commodious, elegant, nor even comfortable. Yet it was, for over quarter of a century, the scene of many important trials, of many personal triumphs, and of many hard-fought battles between the foremost lawyers of Detroit, and, in fact, of Eastern Michigan, as well as of a few from other States. The walls of this old Court room echoed to some of the ablest pleas of H. H. Emmons, James A. Van Dyke, Theodore Romeyn, James F. Joy, G. V. N. Lothrop, Alfred Russell, William Gray, C. I. Walker and a host of other eminent attorneys. Of its history, addresses to which a considerable portion of this publication is devoted, furnish many interesting reminiscences. The building was used for the sessions of the District, County and Circuit Courts till 1871.

But long before the latter date the Old City Hall on what is now Cadillac Square, and the County Building were both outgrown by the increasing business of City and County, and the City undertook the erection of a structure which should be adequate for both. The present City Hall was the outcome of the negotiations entered into for that purpose. For a rental of $12,000 a year the County was given the use of a considerable portion of the structure. The general County offices occupied most of the lower floor, and half of the third floor was devoted to the spacious Court room of the Wayne Circuit Court, with smaller rooms for the judge, jury and sheriff. May 31, 1871, the Bar of the City held their last and commemorative meeting within the walls of the Old County Building on Griswold Street.

The Court met on that day at ten a. m., Judge Patchin presiding, and Judge William T. Mitchell, of the Sixteenth Circuit, occupying a place on the Bench beside him. Two or three formal motions relating to Court business were disposed of, and the commemorative exercises were then introduced by a brief historical address by Judge Patchin. They were continued in a series of addresses and reminiscences in which wit, eloquence and sentiment all had their place. Col. Sylvester Larned and Prosecuting Attorney P. J. D. Van Dyke made short speeches, which were remembered as particularly witty. C. I. Walker spoke of the noted trials which had been conducted in that Court room, including the great railroad con-

spiracy case, in which James A. Van Dyke, David Stuart, William A. Howard, William H. Seward and Judge Van Arman figured as attorneys, and of the express conspiracy case, in which Senator Nye, of Nevada, and Major Cook, of Buffalo, appeared. Addresses were made by G. V. N. Lothrop, J. Logan Chipman, Henry M. Duffield, William P. Wells, Alfred Russell and Miles J. O'Reilly; and Henry M. Cheever read a paraphrase on Will M. Carleton's "Out of the Old House into the New." An informal visit was then made by many members of the Bar to the new Court room in the City Hall, in which Court was to open the next day. Before leaving the old room a photograph of those assembled was taken by the veteran photographer, J. Jex Bardwell.

In the evening a Bar supper was given, which was largely attended, G. V. N. Lothrop acting as toastmaster. Letters of regret were read from Alexander D. Fraser, President of the Detroit Bar Association; Judge Isaac P. Christiancy, of the State Supreme Court; Governor Robert McClelland, Sullivan M. Cutcheon and H. C. R. Beecher, of London, Ont. A feature of the evening was a humorous poem by John Logan Chipman, and responses to toasts were given by Chief Justice James V. Campbell, of the State Supreme Court; ex-Judges Samuel T. Douglas and Henry B. Brown, and Judge Jared Patchin, of the Wayne Circuit Court; Judge John W. Longyear, of the United States District Court; Albert Prince, of Windsor, Ont.; Levi T. Griffin, Col. John Atkinson, Gen. L. S. Trowbridge, William P. Wells and William Jennison.

THE NEW EDIFICE.

The Plans, Construction, Cost, and Description of the New County Building.

The accommodations in the City Hall were ample for the time. In fact there was some complaint that the authorities had been extravagant in putting up a building which, the complainants averred, was far in advance of the needs of the time. But as the number of the judges was increased the large Court room was divided into three, and finally a fourth was made out of the judges' and jury rooms. When a fifth and sixth judge were added rooms had to be obtained for them outside, while the juries were crowded into small and inconvenient quarters.

The agitation for new and more commodious quarters commenced more than a dozen years ago, and a number of different propositions were considered. Among the first of these was one to add another story to the City Hall. Another was to make a large addition to the Woodward Avenue front of that edifice. Still another was to tear down that building and erect a large, modern structure in its place. But after four or five years of agitation it became apparent that the difficulty of bringing into harmonious action two such unwieldy bodies as the Common Council and the Board of Supervisors was insurmountable, and the latter body began to figure on a separate building.

The question of location then became one of long and serious consideration. A number of sites were offered, and finally purchase was made of the south half of the block bounded by Randolph, Congress, Brush and Fort Streets. As soon, however, as plans were outlined, it became apparent that the site was not large enough for the proper architectural display of such a structure as was needed, and the rest of the block was purchased. The consideration of plans occu-

THE PRESENT CITY HALL.

pied several months more, but finally those of John Scott & Co. were accepted, very nearly as they appear now in the completed building. A long controversy followed over the kind of stone to be used in the walls, Portage Entry red sandstone, granite, and different kinds of buff and grey sandstone having their several adherents. The choice finally made was of Eastern granite for the lower story and Berea sandstone for the rest. Although the site was purchased in 1895, and ground was broken for the excavation in September, 1896, the foundations were not ready for the corner stone laying until October 20, 1897. On the afternoon of that day a procession of City and County Officers, headed by the Metropolitan Band, marched from the City Hall across Cadillac Square to the site of the New Building, where a platform had been erected and draped with American flags. An invocation was offered by Controller F. A. Blades, and Mayor Maybury delivered a short address on the antiquity and significance of the ceremony of corner stone laying. Chairman Frank N. Reves, of the Board of Supervisors, then read a list of the articles deposited in the corner stone. As it was impossible for Governor Pingree to be present, his duties as mason were assumed by Probate Judge Edgar O. Durfee, who filled in mortar about the stone, as it was slowly lowered, to the tune of "America." The address of the occasion was delivered by Circuit Judge Robert E. Frazer, who first spoke of Detroit and her natural advantages. He then referred to the new building as especially dedicated to justice, and closed with a strong plea for good government.

After the laying of the corner stone, the practical work of superintending the construction devolved largely upon the Board of County Auditors, who were, out of courtesy and for this purpose, made members of the building committee of the Board of Supervisors. They had the privilege of speaking at its meetings. Though they had not the privilege of voting, yet their opinions had great weight with the committee, and they became the Executive Officers for carrying out its purposes. When the work of construction commenced the Board of Auditors consisted of Lou Burt, George C. Lawrence and Henry Stoflet. In 1898 T. Hawley Christian took Mr. Stoflet's place, and the next year Hugh Scullen succeeded Mr.

Lawrence. The Board from that time to the completion of the building consisted of Messrs. Burt, Christian and Scullen. The Building Committee of the Board of Supervisors consisted of six members and was changed annually.

The contract for the building was let in the spring of 1897 to R. Robertson & Co. with the agreement that it should be ready for the interior work within two years. But labor troubles and some changes of plan prolonged the work, so that their contract was not completed till the fall of 1900. A year and a half more was taken with the interior work, the steam heating and electric lighting apparatus, putting in the fixed and movable furniture, and the building was not ready for occupancy till the summer of 1902. The general County Officers moved in on the first of July of that year, but the Courts did not open till a later period.

The first appropriation for site and building both was $1,400,000. But the land alone cost $550,000, and the contract with R. Robertson & Co. for the bare foundation, walls and roof, without decoration, furnishing or any interior work was $636,000. As the work progressed, and the magnitude and fair proportions of the structure came to be appreciated, additional appropriations were obtained without difficulty. The whole cost of the building and furnishing up to the time of the dedication was approximately $1,600,000, the main classes of cost being as follows:

John Scott, plans and inspection	$ 60,000
M. J. Griffin, excavation	37,459
R. Robertson, contract for building, with finials and bases and other extras	660,087
Vinton & Co., woodwork	103,286
Henry Carew & Co., iron, steel and mason work	53,800
Lenox & Haldemay, plastering	59,517
Venetian Marble & Art Co., mosaic work for floors	52,790
James W. Partlan, heating outfit	90,200
Webster & Meathe, plumbing	29,000
Davidson Bros., marble work	155,000
Detroit Electric Wiring & Repair Co	16,428
Otis Elevator Co	34,610
Art Metal Construction Co., file cases and steel furniture	56,300
Cassidy & Gau, electric light fixtures	27,500
A. H. Andrews & Co., fixed and movable furniture	73,954
Superintendence and inspection	21,197

The remainder is made up of a large number of items classed under the general head of sundries. The item of superintendence and inspection covered the work of half a dozen men in addition to the general inspection made by the architect.

A complete description of the structure is foreign to the purpose of this publication, which has to do mainly with the portions occupied by the Probate and Circuit Courts. The solid and imposing appearance of the exterior are matter of universal comment. The interior is striking in the varied character of its adornments. The walls are still of neutral tints, awaiting the touch of the frescoer, for whose services no appropriations have yet been made. But aside from this, there is no lack of tasteful and elaborate ornamentation. In the wood used for finishing and furniture, mahogany, oak, curly birch, curly maple and sycamore all come into use, the first named largely predominating. In marbles, there is a great variety of colors and textures, tastefully blended. Of foreign marbles, they include Sienna, English vein, white Italian, Alps green, Verona, and red and yellow Numidian. Of domestic marbles, there are dark brown, light brown, pink and green Tennessee, and five kinds from Vermont, viz., blue, light cloud, rubio, olive and Listavino. The columns throughout the building are scagliola, or imitation marble, representing Ravenezza, Siennas and Numidians.

The Circuit Court rooms include in their decorations almost all these different woods and marbles. The rooms at present occupied by these Courts are all on the third floor of the building, where there are also two other Court rooms, as yet unfurnished, held in reserve for future use.

In the southwest corner of this floor, building No. 303, is Law Court room No. 1, now (January, 1903) occupied by the presiding judge, Flavius L. Brooke. Here there is a variation from the heavy red mahogany which is so much in use, the wainscoting of the room being oak, and the benches and other furniture curly maple. East of this, running along the south side of the building are rooms 304, 305 and 306, which were designed as private offices for the judges, but two of them are now in use for jury rooms.

Court room No. 2 is in the northwest corner of the building, room No. 320, and is now occupied by Judge Frazer.

The furniture and wainscoting are curly maple, the walls are tinted in olive green, and the pillars are mottled scagliola. A jury room adjoins this on the west side.

Court room No. 3, being room No. 316 on the plat of the building, is in the northeast corner, and is at present occupied by Judge Rohnert. The furniture and woodwork are red mahogany, the pillars green scagliola, the walls buff, and the ceiling white.

Law Court room No. 4, building No. 307, in the southeast corner, is now occupied by Judge Mandell. The furniture is red mahogany, the wainscoting paneled oak, and the walls dark red.

Court room No. 5, building No. 301, is on the west side, south of the corridor. It is furnished and finished in red mahogany. This is the Chancery Court room, now occupied by Judge Hosmer, Presiding Judge in Chancery. The room between this and Law Court room No. 1 is finished in oak and is occupied by the judges' clerk and his deputies.

The gem of this floor is room No. 6, at present occupied by Judge Donovan. The furniture is red mahogany and the wainscoting is entirely of Alps green marble. The wall back of the bench, and the door and window casings are all of yellow Sienna marble, and the pilasters are scagliola work in imitation of yellow Numidian. The walls above the wainscoting are white and elaborately moulded. They are adorned with portraits of James A. Van Dyke, James F. Joy, Theodore Romeyn and G. V. N. Lothrop, which were presented on the day of the dedication ceremonies.

The assignments of judges to the different rooms are changed every three months.

The Probate Court room is in the center of the building on the second floor, and is elaborately finished. The furniture and wainscoting are of red mahogany, and a variety of marbles enter into the finishings. All of the rooms on the west side of this floor, and south of the corridor are in the suite of the Probate Judge and his staff. Among the decorations of the main probate office is a portrait of Judge Durfee, presented to the Court by Don M. Dickinson. The suites of rooms for the Prosecuting Attorney and the Sheriff, unoccupied Court rooms, and the office of the Superintendent of the building occupy most of the rest of this floor.

INTERIOR OF COURT ROOM NO. 6.

DEDICATION DAY.

Exercises at the Old and New Court Rooms—Statements of the Architect and Auditors—Address of Welcome.

The New Building is intended as the home of all the County offices, and to the average taxpayer and home owner, the offices of the Treasurer and Register of Deeds are, perhaps, the most significant. But the County Courts are vastly more important than the purely administrative offices, and on this account it was perfectly natural that the proceedings in dedication of the finished structure should be conducted by the Bench and Bar of the County. Preparations for this event were entrusted entirely to the Detroit Bar Association, and were planned and carried out by the officers and committees, of whom a list is given on earlier pages of this publication.

The 11th of October, 1902, was the date selected for the dedication ceremonies, and on the morning of that day several hundred members of the Bar from Detroit and other cities assembled in and about the Old Court room for preliminary exercises.

James H. Pound, President of the Bar Association, in brief opening remarks referred to the fact that more than thirty years ago that room was open to a Court of Justice, and since that time many of those who attended its opening had been gathered to their fathers. There were present at this time a number who were mere lads at the former dedication, some of whom would favor us with a few remarks.

Mr. Pound called first upon Gen. Henry M. Duffield, who gave very brief reminiscences of the Old Court room, and closed with the exhortation: "Don't let us look backward over the years passed away, but let us look forward, and let

us go out of this building to-day with the idea that we are brothers, and no matter how we may serve for the advantage of our clients, let us remember that our opponent is a member of the Bar and a brother."

Julian G. Dickinson, who was admitted to practice in 1866, said: "I am one of the old guard, though I scarcely realize it, for the time has passed so rapidly and pleasantly, but I well remember the Old Court room on the corner of Griswold and Congress Streets, where I tried my first case. Of course the memory of that is very pleasant to me. I very well remember the Bar at that time. The leaders, whom we young men of that day looked up to with delight and honor, have many of them passed away while some are still with us, and although we have enjoyed a great deal of pleasure in this City Hall, which was a grand place when we first entered, it is now replaced by a better building, and I am very glad to meet with you and accompany you to the New Court room."

C. J. O'Flynn said: "I have little to say to you, only this, it is a remarkable fact that the Bar of Detroit has become so large that it is practically impossible to be brotherly to everybody. In times past when it was smaller it was possible for us to be brothers, and among the pleasant practices of those days we always had a Bar supper among ourselves, and those gatherings were rare events. We didn't wear claw-hammer coats, then, but we had good times. Every man sat in his shirt sleeves and said what he pleased. Those were the times when we had with us William Gray, G. V. N. Lothrop, Levi Bishop and others you can call to mind. But those good old times have passed and we are now bidding good-bye to an old friend to go into better quarters."

Hon. Hugh McCurdy, of Corunna, who practiced in Detroit more than forty years ago, said: "It affords me a good deal of pleasure to meet you. I was among those who were here 32 years ago. In the old days the Bar of Detroit was a strong one; in other words, there were giants in the land in those days. We had Lothrop, Howard, Billy Gray, lawyers of whom we were all proud. I didn't come to make any speech before you, but simply to let you know I am with you now, and hope I will be with you in the New Court House to bid you welcome."

The President then made the announcement: "As I have it from history, upon the former occasion, when the old Bar met at the Old Court House on Griswold and Congress, after their leave taking, they had a drive around the City and finally had their exercises in front of this Building. Upon this occasion we propose to march under the direction of Marshal Phelps from this Court House to the New Building and take possession of our future home; but first we will have the song by the quartette here, in which everybody is to join, and then assemble in the lower hall to march."

A quartette, consisting of Charles D. Joslyn, Frank T. Lodge, Hedley V. Richardson and Frank D. Andrus, then rendered "Auld Lang Syne," three cheers were given for the Old Building, and the line of march was taken, under direction of Ralph Phelps as marshal, across Cadillac Square to the new structure. The procession was headed by President Pound and Justice Henry B. Brown, of the United States Supreme Court. They were followed by Justices of the State Supreme Court, members of the Association and visiting attorneys.

The corridors of the Building, which had been thrown open to the general public the afternoon before, were elaborately decorated with palms, ferns, and other plants, and were draped with American flags. The procession marched through the corridors to Court Room No. 6, in which to the elaborate permanent decorations were added American Beauty roses and chrysanthemums. After music by the orchestra the President introduced Right Rev. Thomas F. Davies, Bishop of the Diocese of Michigan, who gave the following:

The Prayer of Invocation.

Oh, God, the protector of all who trust in Thee, send down Thy blessing we beseech Thee upon the President of the United States and the Governor of Michigan and upon all the people of this land, and unite our hearts in fear and love of Thy holy name. Teach us that we may both perceive and know what things we ought to do, and also we pray Thee that we may have grace and power to fulfill the same. Keep, we beseech Thee, with Thy protection and mercy all judges and magistrates, that they may truly and impartially administer justice for the maintenance of good and punishment of wickedness. Direct us, Oh Lord, in all our duties, with Thy most

gracious care, and further us with Thy continual help, that all our works may be begun, continued and ended in Thee that we may glorify Thy name and obtain everlasting life.

Address by Mayor Wm. C. Maybury.

The President then introduced Mayor William C. Maybury, who said:

MR. PRESIDENT, LADIES AND GENTLEMEN: It scarcely seems necessary that a word of welcome should be uttered this morning to those who have gathered here, for we are not as they were of old, gathered from a far country; the peculiarity of our country is that we are one people, one nation, and to-day those resident here and those from abroad are simply of one family, one neighborhood, and for all these reasons you are cordially welcome.

I cannot but express a word of regret that there have been so many changes in the forum of the Wayne Circuit Court, and my mind, this morning, goes back to the time when, in the modest rooms on Woodward Avenue, there sat in solemn conclave four of the wisest jurists that ever occupied the Bench of any country, and the Bar came there twice a year and welcomed, at the sitting of that Court the members of the Bar throughout the State, and I can well remember the fraternal and brotherly love that existed between this Bar and the State at large. I have recalled that picture many times and my mind now goes back to these men who gave such great aid to the establishment of jurisprudence in the States of this Country. Then I recall my personal pleasure in being a student in the office of G. V. N. Lothrop.

Such an occasion as this brings to mind so many incidents of the past. I regret very much the changes, and yet how could it be better changed, unless it be for these surroundings so elevating and inspiring. My dear friends, none of us can imagine what this morning means, looking to the future. The Temples, the several structures of the world, have been our great teachers in all ages. The pyramids of Egypt have caused men to wonder more than all the books ever written; the coliseum has received in its ruins thousands of visitors. These monuments which we put up along the pathway of life are the silent teachers that come close to us and teach us far more than books. A building is like an individual, it has an individuality, indicative of what the builder was. There is something beneath it all that indicates the man. What is true of individuals is true of buildings, and the real adornment of this Building is the fact that it becomes a place of justice and of equity.

THE JUDGES' DESK, COURT ROOM NO. 6.

Statement of the Architect.

The President said: "It is not often afforded to a man the privilege of constructing or designing an edifice such as this, and from such a man we will now hear a few words, Mr. John Scott, who designed this building."

Mr. Scott replied briefly as follows:

MR. CHAIRMAN AND GENTLEMEN: I take great pleasure in tendering the keys of this Building to the Chairman of the Board of County Auditors and naturally feel some pride in it, and I might give some slight description of the work. The site of the Building made the task a peculiar one, the difficulty being to give a full view of the structure from Cadillac Square. The Building, the exterior of it, is complete. The slight difficulty in reference to the foundation, as it is on the bed of an old creek, has been overcome, as up to the present time no settlement has been found. In view of the criticism that has been made it might be well to give some figures at this time. This structure cost, including furniture, $1,600,000. It covers 45,000 square feet of ground, and was six years in completion. The cost overrun the appropriations only $6,000. I wish to thank the contractors and workmen employed for their faithful work, and the Auditing Committee, as we feel that a large measure of success was due to their efforts. I thank you.

Statement of the Board of Auditors.

Mr. Pound—Having safely delivered the Building into the hands of the County's representatives, we will now hear what the Chairman of the Board of County Auditors has to say in regard to turning it over to the public at large.

Mr. Lou Burt, thus introduced, spoke briefly as follows:

MR. CHAIRMAN AND GENTLEMEN: The last two or three days have been a revelation to some of the people of Wayne County and I speak of the people who have visited this Building. They have met with a series of surprises. Last night we opened the Building to the school children, little boys and girls, young men and women and teachers, with a view of showing them what had been done, and incidentally to show them what they would be obliged to pay for in the future. As I said, it has been a series of surprises, and I think the greatest surpise yet is the settlement. You noticed from time to time that the Board of County Auditors and Supervisors were going to give this structure to the people of Detroit, and this we do to the people of Detroit and to this Honorable Court.

I am not here to make a speech, but while I am on my feet I want to say a word as Chairman of the Board, as it gives me the opportunity to refer to the work of the architect, John Scott. I have been a member of the Building Committee ever since the corner stone was laid, and I have seen the work of Mr. Scott, and I know it has been a life work. But he is not the only one. Here are the Building Committee and the Board of Supervisors. But here is one especially, a man that has devoted the last four years of his life, and has seen every stone laid here, and everything done right, and that man is Auditor T. Hawley Christian, my colleague. He has spent hour after hour in this Building, and day after day, and as a result we have here one of the most beautiful Buildings that stands to-day in the United States.

I accept the key from Mr. Scott, and in turn will turn it over to the people of Detroit, and I know the future must say that good, honest work has been done here.

JUDGE ROBERT E. FRAZER.

ACCEPTANCE FOR THE BENCH.

Acceptance of the Building in Behalf of the Bench and the People by Judge Robert E. Frazer.

Circuit Judge Robert E. Frazer, who had been designated by the Bench to accept the Building on behalf of his associates and of the people, was then introduced and spoke as follows:

In behalf of my associates, Judges of this Circuit, and in behalf of the people of the County of Wayne, whom we represent, I accept this beautiful temple, dedicated to the cause of justice, and I trust that we, aided by the lawyers, the members of this Bar, will see to it in the future that the records of this Court are never soiled by any act of injustice, even to the humblest citizen of this County.

An assemblage of gentlemen, such as you are, representing one of the most intellectual professions that is known, gathered here for the purpose of dedicating this Building to the cause of justice among your fellow men, ought to inspire any man to speak words of wisdom. I cannot help thinking how great a force exists in this body of men for good and evil, and I cannot help calling to mind how the general public think, without consideration and reflection, on the profession of law. It has been common in years gone by, and now is a common thing, to cast slurs at members of the legal profession, but I am here to assert, and can, without fear of contradiction, assert ,that there is no profession in the land where honor and inegrity are deeper seated than in the profession of law. It has been my privilege for well nigh forty years to associate with members of the profession, and it is my opinion that they stand as high in honor, integrity and in force of character, and in love of justice, as any profession known to man.

We have a great responsibility resting upon us in the walk of life we are to follow. The rights of men of all kinds come before the Courts for investigation. Their lives, their liberties and their property and all the rights men hold dear, come before the Courts for review. Of course the investigation

of these questions requires the lawyers and the Bench to be learned in all these various things that may come before them, and a Court can only deal with these questions fairly and administer the law justly, when aided by an honest and intelligent Bar. When you stop to consider the great responsibility that rests upon you and upon us, it may make you pause and think whether you are capable of discharging this duty faithfully. It is an idea of some members of the profession that a judge should be skilled in the law. Well, he ought to know enough law to do justice, but he ought not to know so much that he cannot do justice.

We have entered upon practically a new life; we have departed from the old quarters; we have left behind us things in the past, only to be recalled in the future by pleasant reminiscences. We have already buried all the quarrels and misunderstandings along with our departure from the Old Building, and we have taken up here a new life of hope, of desire to do right, a new life with the inclination to make better, and in this determination to join hands here—the Bench and the Bar—to enter upon this new life successfully that every citizen may invoke justice within these walls, and receive justice. I call upon the spirits of these old, great men who have gone before, I ask them to come down here now and mingle with us in these deliberations, to impart to us their thoughts from their disinterested standpoint, and suggest to us the methods of improvement we should pursue, that through the guidance of these spirits, who I hope and trust and believe can intelligently communicate with us to-day in some mysterious and unknown way, to influence us in our future conduct, we may be so inspired and guided in our duties that their hopes and desires may not be blasted by any conduct of ours in the time to come.

They say a man who is dressed well is not as apt to do a thing that is mean, as the man who is not dressed well. I never tried it (laughter). But I made an attempt at it to-day, and I see my Brother Pound has done likewise (laughter). But following up the idea that I spoke of, it is to be hoped that the Bench and Bar in their daily intercourse, and in the daily administration of justice may be inspired to do better and cleaner work than we have been able to do in the past. I have been thinking how much this country owes to the judiciary. The decision of a Court is binding, and from it there is no appeal. I mean a Court of last resort, and when the Judges of that Court have said "this is the law" it is the law, and no man can gainsay it; and when that decree is announced there remains nothing but the Executive Branch of the Government to enforce it, and no man can contradict it or review it. If the decisions of the Court are not final and binding then you

have no government, and no executive to carry out this decision, so that everything depends on the honesty, patriotism and ability of the Judges of the Court. There has been no public exigency in which the Courts have not arisen to the gravity of the situation, and in which they have not been able to point out a remedy, and there is none where they cannot point a way out of the difficulty. There have been many times, in the history of this Country when grave and important questions have been presented to the Supreme Court of the United States, when they have been called upon to interpret the Constitution, and have done so. There are two classes of people in this Country that have their ideas of interpreting the Constitution, and of interpreting every law and statute that is made. Some are for a strict construction, and some for a liberal construction. I am for the construction that meets the emergency. If the Constitution of the United States is not good enough to protect the rights of the people, then our Government is good for nothing. We meet these questions day by day, and the Courts are criticised for their action in various things. Of course there is a Constitutional privilege existing in every lawyer to damn the Court, and that we cannot take away from him, and I have no desire personally to take it away from him, for I don't want a boiler filled with steam not to have a safety valve for the protection of the boiler. I know there are people going around who say that the Courts are guilty of legislation, that the Legislature does not make the laws, but that the Courts make them. I am not prepared to say whether that is so or not. I once met Judge Cooley riding on a car and he was talking about a Legislature that was somewhat disreputable. He said: "They don't know enough to make a law," and I said. "Well, if they don't the Supreme Court does." This they call judicial legislation. Now when the question comes up for investigation, the judges are to decide what a law means, and if it is possible for them to decide that it is something sensible, they will do so. The Courts are the last sheet anchor of the people. The ship of state may drive here and there, storms may arise, she may be threatened with destruction, but if the sheet anchor of the Court holds the ship can never be destroyed. In the integrity and patriotism of the judges is the safety of the American people. As long as the law is honestly administered there can be no room for anarchy in this Republic. I believe in the integrity of the judiciary. I have never in my experience run across a judge, although there may be some here and there, but I do not think there is a judge who has been raised to the Bench, who will not administer the law fairly for all.

ACCEPTANCE FOR THE BAR.

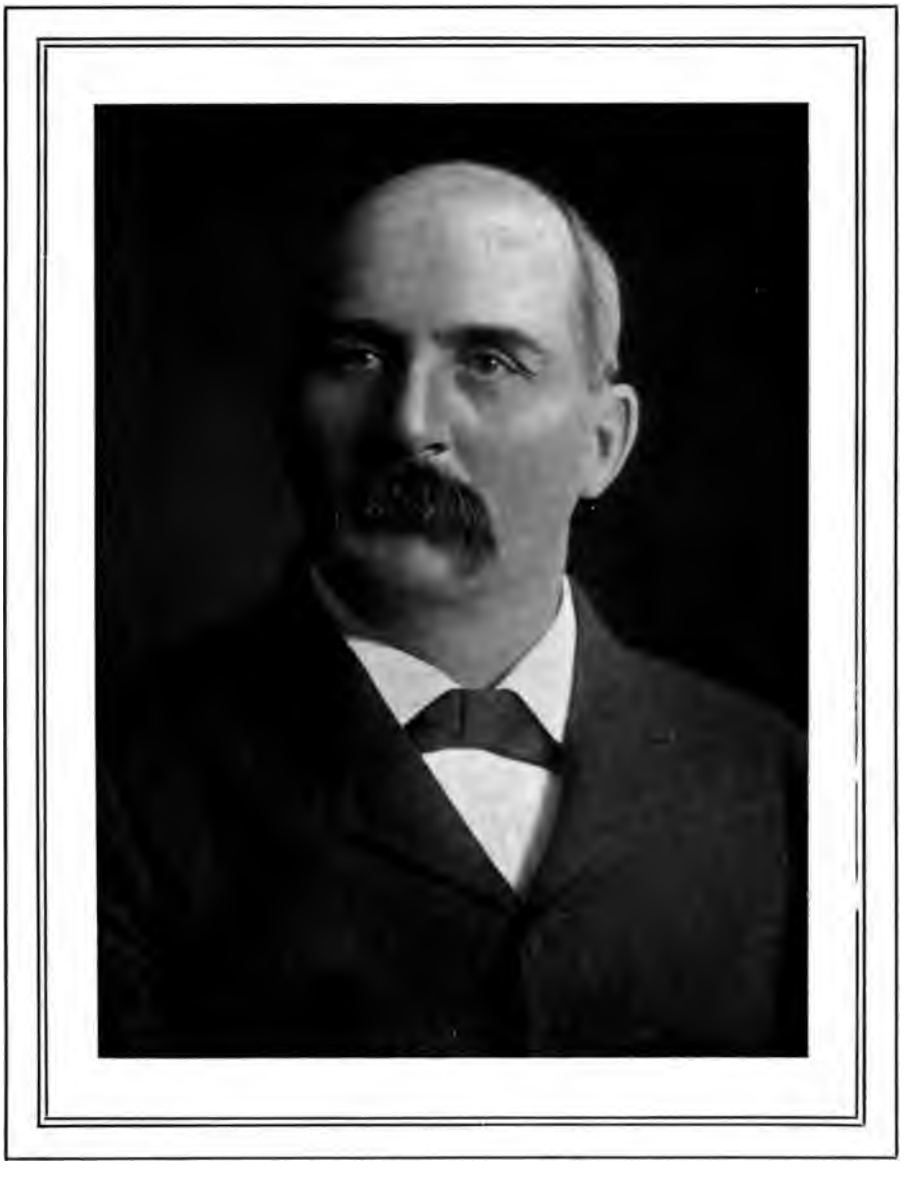
Address of President Pound Accepting the Building in Behalf of the Bar.

In behalf of the Bar, James H. Pound, President of the Detroit Bar Association, then spoke as follows:

GENTLEMEN OF THE BENCH, GENTLEMEN OF THE BAR, MY FELLOW CITIZENS AND FRIENDS: Upon behalf of the Bar of the County of Wayne, and as its spokesman upon this occasion, I too, accept this massive building and these magnificent and beautiful Court rooms which are to be the workshops and almost homes of the Bench and Bar of this County for this and succeeding generations—the places where hard work will be done, stubborn battles be fought, and men, women and children's lives, liberties and fortunes be preserved or destroyed as Justice may dictate, by the judgments to be rendered, or the decrees given in causes pending in these Court rooms during the lives of this assembled audience and of their posterity.

In my acceptance, speaking representatively for the whole Bar of Wayne County, I join heartily in the good wishes uttered by the previous speakers, as in all those which may be uttered hereafter, upon this occasion, voicing the sentiment and hope that neither the portals, nor the precincts, nor the bodies of any of our new Court rooms may ever be used save to uphold and maintain the right, and to demonstrate the fact that the administration of the law in this County is indeed what the legal text writers tell us that it is, the perfection of human wisdom and justice.

Our wish and hope is to ever have, not only able, but honest, broad-minded, and courteous administrators of the law as judges—scholarly men, with enlarged mental views, governed and tempered by great, warm, human hearts, dealing with the suppliants for justice, who must necessarily attend these courts with their controversies—men, women, and children, whose rights must be hereafter determined in these court rooms, who are engaged in, what are to them, serious conflicts



PRESIDENT JAMES H. POUND.

to redress their wrongs, or to defend themselves from unjust attacks. May justice ever be administered within these now unsullied walls in such a manner as not only to win the admiration of all honest men, but to win the equally high commendation of the honest approbation of the judges' own consciences.

It is our hope that in the solution of the great legal problems which must necessarily be adjusted within this building by these tribunals, justice may not only be able, but blind as to the litigants, and that the judgments rendered and the decrees passed may ever be the result of earnest mental labor, by competent men, of approved capacity, and that if not to all at least to some occupant of one of the Benches in this great Building, may come the great good fortune that befell William Murray, the Lord Mansfield of the English Bench, who in the case of the negro Sommerset, by the application of the beneficent principles of the Common Law of England to the amelioration of the condition of his fellow man, set at defiance the seeming desire of some judges to restrict liberty, instead of finding reasons for enlarging it, where they can with safety. He, in Westminster Hall, declared, about one hundred years ago, that it was the settled law that the air of England was free air; that though British Colonies might recognize the right of ownership in one of its citizens by another, as a matter of Colonial regulation; that a man because he was white might own the flesh and blood, the nerves, brain, muscles, sinews, tendons and bones of his fellow man because he was black, a question he had not power to solve—yet still that the air of England was free air, and that the moment a slave breathed it, that moment his shackles and gyves fell from him; that his bondage was at an end; that he was no longer bound but free; that at that moment he again stood before his maker and his fellow man, free and upright to look his brother in the face, and enabled to approach the throne of his God as a self reliant and accountable human creature as he had been placed by God himself upon this earth. This decision will, in my opinion, justly live and illumine the jurisprudence of all civilized nations to the end of time. A higher result than this I cannot wish.

It is not unimportant at this time, in my opinion, to cast the reflecting eye over the history of our own fair city, ours by nativity or adoption, and remember the three great nations that have had full sway therein, as well as the flags that floated thereover, the Fleur de Lis, the Cross of St. George upon a blood red field, and lastly our own beautiful banner, the Stars and Stripes.

First a modified form of the Civil Law succeeded the savage administration of justice administered by the native red

man, the principles of Justinian being the first code of Laws that were employed to adjust the disputes between the French residents of this locality, and used and applied by the rude Courts held by Cadillac, his coadjutors and successors; who, with their associates and party, not only discovered and settled this beautiful city, but who for a period of sixty-two years nursed the infant commerce from which, in part at least, has sprung this truly great and beautiful metropolis.

There were numbered among the families of French extraction in this county the Verniers, the Tromblys, the Beaubiens, the Rivards, the Peltiers, and many others; creditable representatives of this race until this very day. What a contrast there is, my friends, between this magnificent edifice, finished in polished marble, filled with beautiful Court rooms for the dispensation of justice, and ornamented and embellished to the highest degree of elegance and grandeur by modern workmanship, a building which would warrant its being placed as an ornament in any great metropolitan city of this world, and the log cabin with earthen clay for chinking inserted to keep away the chill blasts of winter in which justice was first administered in Detroit. And still, my friends, justice, history informs us, was as dear an heritage and as fairly rendered to the French habitan, and frontiersman, and citizen of this locality of that day as is justice now. Justice was then, we are told, as fairly given as it is now or ever can be in the noblest edifice which can ever be constructed by man to embellish and adorn any fair city.

The French Regime was followed by the introduction of the Common Law of England and by trial by jury, upon the accession of the English, who held possession and sovereignty over this territory for thirty-three years, surrendering it to our fathers as a legacy of the Revolution. Our fathers who, with ourselves, hold this common law of England and trial by jury to be so dear, hold it to be a part of our common heritage, a part too of which we are proud as our Canadian brother or any Englishman, who ever lived can be. It is a system which, blending the legal knowledge of the Judge in the exposition and declaration of the law with the common sense and justice of twelve commoners, still saves the determination of the fact for the honest judgment of honest, free citizens drawn from all walks of life. We believe that this system comes as near perfection, as near the realization of the truth of the phrase "Vox populi vox Dei," as any mere human agency can ever be; a system that has stood the test of a thousand years of trial; a system that is thoroughly imbedded in the hearts of all English speaking people, that has met the approbation of inquiring learned men the world over; a system that is so ingrained in us that it has become a constituent part of our

very selves, a very part of the warp and woof of all that goes in our opinion to constitute our free and manly being. And I am safe, I am sure, in saying that all encroachments attempted upon this system by visionary reformers, will be met by the stern, determined and effective opposition of all earnest, conservative men who wish their country well, but particularly by the members of the Bar, who have ever been in the forefront of all battles for Constitutional liberty, who too are educated to consider this right or privilege as a most important one to the exercise of liberty. Men of this profession are men to whom England to-day owes in a greater measure perhaps her Constitutional restrictions upon kingly prerogatives than to any other class of her citizens; men who believe sincerely that, deprived of the right of trial by a Common Law jury, and the writ of Habeas Corpus, these twin pillars of our jurisprudence, these two great privileges, we would be no longer free. The Bar so viewing, they, as a practical unit can be depended upon to assist and lead in vigorous opposition to any scheme restricting the territory or sphere of its beneficence. They may be relied upon to oppose thereto a united resistance which will render all such plans ineffective, and though occasionally by the effort of some misguided but forceful man or men, these great privileges may be curtailed, withheld or withered for a time or even to the extent of a generation, yet still the love of these principles is so innate in the bosoms of men who once enjoyed this system that the demand for its enforcement and operation can never be quenched in them, or their children, or their children's children to the end of time. The only method to supplant this demand that is conceivable would be to adopt the advice of Machiavelli to his ideal tyrant and prince, that where a people have ever felt and enjoyed the blessing of liberty the only way to enforce a despotic government over their land is to slay and extirpate them all, men, women and children, leaving not one to keep alive the tradition of their father's liberty and privileges; or to impart the knowledge of their heritage to oncoming generations. And sirs the Bar is not alone interested in maintaining this great privilege of a trial by a pure and honest jury. It is, I maintain, indispensable to our very liberty itself. And the Bar of Detroit, which has ever done its whole duty by the people of this city, and by its country, will, I venture to predict, in the future be the defenders of these privileges to the last.

But it may be asked, has and is the Bar of this metropolitan city been doing its entire duty to this city of its birth or adoption? And this query, if put, may be considered in two views:

First—Do the individual members of the Bar owe any special duty to the government, national, state and municipal, beyond good citizenship? And do they owe anything beyond the observance of the letter of the Laws to the place in which they practice their profession?

Second— Does the business of the Bar impose a higher trust upon them individually and collectively than on the average citizen, the merchant, or those employed in trade, or working as dependants upon others alone, whose rightful object of labor is solely the acquisition of honest gain, or whose ends are supposed to be primarily discharged therewith?

I maintain that both of these interrogatories should be answered yes. Seneca says, "It is every man's duty to make himself profitable to mankind," and I therefore submit that any man whose talents are such as cause him to succeed in the legal profession is, as I at least recognize and maintain, under peculiar obligations to benefit mankind if he can. As Lord Coke put it centuries ago, that great defender of the Common Law of England, he considered that every man who was successful in the legal profession was under an obligation to benefit society. Coming to a later and yet a very celebrated man for our guidance I quote what Sir Samuel Romily said of his own future as he stood upon the threshold of our profession hoping for success: "Should my wishes be gratified I promise myself to employ myself and all my talents and all the authority I may acquire for the public good. Should I fail in my pursuit, as fail I may, notwithstanding my best efforts, I will console myself with thinking that the humblest situation in life has its duties to perform which one must feel a pleasure and satisfaction in faithfully discharging." This was a rule to which he adhered so well that at the height of his fame as a solicitor, he gave freely of his time to parliamentary duties and succeeded in procuring the repeal of the bloody punishment of death as a penalty for the commission of the theft of the small sum of five shillings, and of larceny from a shop of the smallest article, against the vigorous opposition of the Government and those in power.

Sentiments such as these, my friends, I imagine, must animate the hearts of all true lovers of humanity, in our profession, those who are in the practice of the Law for their love of its grandeur and its opportunities to assist the deserving; of all men who attempt to practice law intelligently, not as a mere trade to gain a livelihood; but as one of the highest and noblest occupations and professions known to man; men who, notwithstanding the burden it places upon the intellect to master its intricacies in some measure even to those born with a capacity for the exposition of legal prin-

ciples, still have a consuming desire to at least be attendants and servers upon those who minister in the temples of Justice, so that they may aid the meritorious and oppressed. To these members of the Bar alone can the general public look for unpurchased assistance in the framing of beneficial laws, laws designed not to tie the hands of freemen, or to place gyves upon their feet, but to maintain and enlarge their reasonable liberty. Men filled with this ardor can and will assist their countrymen not only in the Courts, but in Legislative Halls, with a thrill akin to sanctification in their God-given ability to clear and rift away the clouds that fraud and covin use to the undoing of the righteous and honest citizen of the commonwealth. Men like these believe their calling is not outranked by any occupation on earth. Men like these would more willingly struggle in their profession on a bare livelihood and spend their time battling for the liberty of the citizen, and righting the wrongs of the poor and oppressed than earning the largest fees in distorting laws to the humblest citizen's undoing.

These men I conceive to be true lawyers, many of whom of the highest ability, I am proud to say we of the Detroit Bar possess at this present day. And it is my earnest hope that they will never grow less in number and activity.

The duty of the lawyer to plead for liberty is beyond all compensation of a merely monetary nature, and I hope that the day is not far distant when by Legislative enactment the advocates' oath will be administered to the applicants for admission to the Bar, as for centuries it has been administered in the Courts of Justice in our parent country, that oath which in a great measure defines the counsellor's duties, and is a constant and lasting admonition of his duty to the public and to the poor, but meritorious client.

I think our Bar has done its duty well in the past in favor of individual liberty as is shown by the Tyler, Farnham and Faulkner cases, and many more which might be cited, and I hope earnestly that there will be no deterioration in this respect in the future.

Other thoughts occur to me, but I do not intend to longer claim your attention. Yet as your spokesman I have no hesitation in saying that while true it is that all governmental attributes and powers derive their just prerogative from the consent of the governed, and while true it is, that some grave and well meaning thinking men have been fearful of the durability of a republican form a government, owing to possible corruption of the people; and granting that, remembering the histories of the Ancient Republics, there may be some basis for this thought; still considering our own steady growth as a nation, the increase of this country in a little

upward of a century in wealth and in manufacture, and agriculture, it needs no gift of prophecy upon my part to certify to the stability of this our common country, and the prosperity of this our native and adopted State.

So long as our Courts are presided over by just, upright, learned, laborious and able jurists, to whom the dispatch of litigation in an able and praiseworthy manner is a labor of love, at once recognized, not only as a pleasure, but a debt and a duty to the citizens of this State, to which this Building and all the powers of their mind are consecrated, their aim being that the justness of their decision may be seen of all men; and while such Judges are assisted in their labors for the right by a strong, able, eloquent and courageous Bar such as Detroit has now, and has ever hitherto possessed, and which you, my young friends here present, will shortly have the duty and responsibility of maintaining in its high estate, placed upon your shoulders to maintain in all its vigor and purity—while all these factors remain I cannot hesitate to say that our freedom and the permanency of our institutions will endure, and that the citizens of our commonwealth will have no serious cause of complaint. The citizen may well then rely with confidence upon the integrity of the various Courts, as well as their skill and learning, their able administration and their innate desire to do justice, which counts for more than all.

As there is no such insidious sapping of a commonwealth's strength as through the corruption of politicians and the rotten decisions of Courts, so too it is true and universally recognized, that there is no such stay to a popular government as an honest, upright and able magistracy, faithfully executing the laws in a humane manner, assisted by such a Bar as I have described.

Believing that we can and will do all our fathers in the profession have done before us, and leave the history of our works as a valued heritage to our successors, I accept this Building and these Court rooms on behalf of the Wayne County Bar, and devote and dedicate them to these holy purposes, and I pledge you my friends, invited guests and citizens that our Bar of the present day will keep and assist in keeping these great Courts clean and wholesome from the perpetration of injustice; and that we will labor earnestly, conjointly with the Bench, and fail not in the battle for the dispensation of justice and the maintaining and broadening even of the liberty of the individual citizen against all aggression upon his rights. And we pledge you that these Courts shall remain as they are now, pure, undefiled and unsullied temples of the law, in which justice is dispensed to all, high

and low, rich and poor, white or colored alike, according to their merit, with the sole and only end in view of determining that which is right in the particular case; and that, justice once having been ascertained and determined, it will be awarded to the suitor, be the consequences what they may.

REMINISCENT.

Reminiscences of the Bench and Bar of Detroit for the Last Fifty Years, by Hon. Henry M. Cheever.

Hon Henry M. Cheever, for almost half a century a practitioner at the Bar in Detroit, was next introduced and gave the following entertaining address:

MR. PRESIDENT AND GENTLEMEN OF THE BAR: In one of the great Pyramids of Egypt is a long, straight shaft, cut slopingly through the solid stone pointing to the sky near the pole. If we look through it now we see a starless heaven. But when it was cut it pointed to a bright star, now no longer within its range of vision. That Pyramid was built when the savages of Briton could see the Southern Cross at night. The same slow change in the position of the earth's axis, that, in time has sunk the Southern Cross below the horizon has turned that star tube away from the star at which it pointed. So, in the revolution of our lives does the axis change its place with years until men and events, which, seen through the range of early experience, seemed imperishable, almost, pass from our vision and only memory can show them to us. But we never forget. As Richter says: "Recollection is the only paradise from which we cannot be turned out."

To recall some of these men and events which have passed out of sight is the task assigned to me. I am bidden to give you some reminiscences of the Bench and Bar during the past fifty years. My earliest recollection of the Bench and Bar of this City and County, also, necessarily includes the Supreme Bench, since at the beginning of the last half century the Supreme Court was composed of the Circuit Judges and held some of its sessions in this City. It was in the year 1854, forty-eight years ago, that my acquaintance with the Courts and Counsel of Detroit and Wayne County commenced.

The Federal Courts were presided over by the, even then, venerable Ross Wilkins. He took his seat, as the records of the Court show, as District Judge on February 23d, 1837, less than a month after the admission of Michigan into the Union,

Hon. Henry M. Cheever.

and retired from the Bench March 4th, 1870, having served thirty-three years. He was succeeded by John W. Longyear, and at his death, March 11th, 1875, Henry B. Brown was commissioned and took his seat April 6th, 1875. He discharged the duties of the office with great ability until he was called to the Bench of the Supreme Court of the United States, December 20th, 1890, in which high office he has borne his honors so well that we can forgive the power that took him from our local tribunal. The last Journal of the District Court signed by Judge Brown was under date of December 30th, 1890. Below this signature, in Judge Brown's handwriting, is the following: "God bless this honorable Court—Finis." Whether this was intended by the learned Judge as a prayer for divine protection for the Court after he had retired from its bench, or as an intimation that, with his retirement, the usefulness of that tribunal was ended, as the word "Finis" would imply, is not clear.

Henry H. Swan succeeded Judge Brown on the 28th of January, 1891, and has now occupied his seat for over eleven years, and has fully maintained the dignity and learning which characterized the administration of his predecessors. These District Judges have acted as judges of the Circuit Court also, the Circuit Judges rarely appearing upon the Bench.

In the year 1854 the Federal Courts held their sessions in the Odd Fellows' Hall, a building on the northerly side of Jefferson Avenue, between Bates and Randolph Streets. They were soon removed to the Building now occupied by the Michigan Mutual Life Insurance Company, on the corner of Jefferson Avenue and Griswold Street, which was thus occupied until 1867, when the now old Federal Building was finished, on the corner of Griswold and Larned Streets. In 1898 the new Federal Building was ready for occupancy, and the Court once more changed its location and is now probably settled for a generation to come.

In 1854 the State Supreme Court consisted of the judges of the several Circuit Courts sitting en banc. There were at that time but eight circuits, now there are thirty-six—but the Legislature is not in session—and consequently in 1854 the Supreme Court was composed of eight judges. They were Warner Wing, the Presiding Judge; George Martin, Sanford M. Green, Joseph T. Copeland, Samuel T. Douglas, David Johnston, Abner Pratt and Charles W. Whipple.

The Court room was in what was known as the "Seminary Building," which stood on the site of the present City Hall. It was a plain two-story yellow brick building, facing Griswold Street, just where the Griswold Street entrance to the City Hall is, and was reached by a flight of wooden steps. The Court Room was a plain, unfurnished room with cheap

pine tables for counsel, and a platform raised some four feet above the floor with a close wooden railing in front of the desks of the Judges. I remember this railing particularly, because of the fact that the room was heated in winter by a stove in which wood was burned and at the feet of each of the Judges, in this railing, was a hole similar in shape to the entrance to a dog kennel, not for the entrance or exit of the Judges, but, as I learned, for the purpose of keeping the feet of the judiciary from freezing. And no more striking and emphatic evidence of the progress and growth of this State in its population and resources can be found than by a comparison of this dingy Court Room with the elegant Capitol Building at Lansing in which the Supreme Court now sits.

The Supreme Court, thus constituted, continued until 1857, when a separate Court was organized by the Legislature with four judges. The first term of the new (present) Court was held at the Capitol in January, 1858. The justices were, George Martin, Chief Justice, and Randolph Manning, Isaac P. Christiancy and James V. Campbell, Associate Justices. Thomas M. Cooley, who subsequently became so eminent on the Bench and as a writer on constitutional law, was the first reporter.

At the commencement of the last half century there was a curious anomaly—in some respects—in this City, in a Court called the "Mayor's Court." It was created by act of the Legislature in 1847. By the City Charter provision was made for the election of a Mayor, a Recorder and Aldermen. This Mayor's Court had jurisdiction of ordinance cases only. It was a sort of Kindergarten Slander Mill, and its principal cases were "Abusive language" cases.

The Charter provided that the Mayor should preside, and in his absence the Recorder, or, if both were absent, that one of the Aldermen should act as judge. As a matter of fact, however, the Mayor seldom presided, the Recorder was the usual Presiding Judge. The Recorder at this time, in 1854, was George V. N. Lothrop. The sessions of the Court were on Monday morning only and were held in the old City Hall on the site of Cadillac Square. As a young lawyer I was frequently before the Court to prosecute or defend cases where it was charged that abusive language had ruined some huckster's reputation. But I shall never forget the dignity with which the Recorder presided, and how he imposed fines, one dollar or two dollars, with all the judicial gravity he would have shown in imposing a life sentence.

This Court was superceded by the present Recorder's Court in 1857. Henry A. Morrow was the first Recorder and the Court was formally organized and a seal adopted in January, 1858.

In August, 1862, Recorder Morrow entered the service of the United States, resigned his office, and Circuit Judge Witherell acted as Recorder until February 15, 1864, when Benjamin F. Hyde assumed the duties of the office. Recorder Hyde died and George S. Swift was elected and took his seat November 14, 1866, and held the office by repeated elections until his death in October, 1893, but he was in failing health for a long time before his death, and during his inability to act the Circuit Judges, severally, took his place. In June, 1889, Fitzwilliam H. Chambers, having been elected Associate Recorder, took his seat and held office until the expiration of his term, although for many months he was unable to discharge the duties of the office. He died after the expiration of his term, in July, 1900. With the official occupancy of the Bench by those now living you are familiar.

The Recorder's Court occupied the old City Hall on what is now Cadillac Square, from its organization in 1858 until the completion of the present City Hall in 1871. It continued in the City Hall until its removal to the Municipal Building in 1890, a change which did not meet the approval of either Bench or Bar. It is to be hoped that it may now be restored to its old quarters in the City Hall.

This Recorder's Court—as you know—has criminal jurisdiction only. But in 1869 it was proposed to give it civil jurisdiction and to attach Monroe County to this Third Circuit, which embraced Wayne County only. This proposal did not come from Wayne County, but was smuggled into the Legislature by some of those law makers from the interior of the State, who had the interests of Detroit and Wayne County so much at heart that they thought they understood their necessities and desires better than did the inhabitants of the City and County themselves, an opinion, I regret to say, which seems to have been inherited by succeeding Legislatures and especially by the last one. This proposal excited the greatest resentment on the part of the Bench and Bar of Wayne County, and meetings of the Bar were held to protest against the change. So strong and determined was the opposition that the measure was abandoned, the first instance I think, in which a protest from the Bar of Detroit to the Legislature has had any but an opposite effect from what was intended by the protest.

This agitation, however, resulted in the creation of the Superior Court in 1873, which existed until 1887, when it was abolished. It held its sessions in the Seitz Block on Congress Street, in the upper story of the McGraw Block, and in the old City Hall on Cadillac Square. Its first Judge was Lyman Cochran, a quiet and able judge, and the only other and the last occupant of the Bench was J. Logan Chipman, who sat

from 1879 to 1887, when the Court was abolished, than whom a stronger or abler man never graced the Bench or Bar of this City or County.

The Wayne Circuit Court held its sessions at the beginning of the last half century in the Old Building on the corner of Griswold and Congress Streets, where it remained until May 31, 1871, when the new City Hall was finished.

The Presiding Judge in 1854 was Samuel T. Douglas, a dignified, learned and upright Judge. In May, 1857, he resigned and Benjamin F. H. Witherell occupied the Bench until his death in 1867. The Governor then appointed Charles I. Walker to the vacancy, who held the office until July, 1868, when he resigned and Henry B. Brown was appointed. He occupied the Bench but a short time, having resigned in November, 1868, and Jared Patchin succeeded to the office and held it until November, 1875. Cornelius J. Reilly was his successor, but he resigned in November, 1879, and was succeeded by Fitzwilliam H. Chambers. With the increase in the number of judges from time to time subsequently, and with the personnel of the Bench since that time you are all familiar. Each of these judges, and those who succeeded them as well, have filled the places of honor to which they were called with an honesty of purpose, a purity of intention and an ability which has maintained the high character of the Wayne County judiciary.

The Circuit Court occupied the Old Building on Griswold and Congress Streets from January, 1845, until the completion of the City Hall, June 1, 1871, a period of twenty-six years. There is an interesting bit of history connected with the acquisition of this old Griswold Street lot on which the Court House was built. The land belonged to the old State Bank of Michigan, and this bank was the depository of the County funds. The bank had at this time suspended payment. County orders were at a heavy discount, and the County to save itself as far as possible from loss, took the title to this lot and built the Court House upon it. But it was with great difficulty that the County raised the money to erect that little two-story building. What a contrast to the financial operations of the County at this time in the purchase of this site and the erection of this palatial structure upon it. The Old Building was completed and the County took possession January 1st, 1845. All this antedates the half century of which I speak, but will not be considered irrelevant to my subject.

On the 31st of May, 1871, thirty-one years ago, a farewell meeting of the Bar was held in the Old Court Room, where brief addresses were made. From Mr. Lothrop's address permit me to quote a few words, both because of their intrinsic merit and because they portray the feelings of the Bar towards

the Building and its pleasure in leaving it. I quote from the daily press of that date. Mr. Larned had preceded Mr. Lothrop and had said that his "feelings were too deep for tears." Mr. Lothrop said: "I cannot say that my feelings are too deep for tears. I don't think, indeed, that I have any tears to shed, although I have been familiar, nearly all my professional life, with this Court Room; yet I am gratified that we are leaving it. To pass all our inconveniences and the imprecations that we have from time to time showered upon the place when we have been obliged to come to it, we cannot, with entire indifference bid adieu to it. And now as I bid adieu to this house, with my brethren here associated, I shall say, all hail, as we contemplate the commodious quarters provided for us elsewhere." In the evening a banquet was enjoyed in the new Court Room, and seventy-five guests sat at the tables.

The Probate Court in 1854 was held in a small room of the old Circuit Court Building. The room was about twelve by thirty feet in size, and in this mortuary closet the business of the Probate Court was transacted. In 1871 the Court removed, in common with all the County offices, to the City Hall, where its accommodations were but little better. In a comparison of the old Court Room on Congress Street with the magnificent suite of rooms now occupied by the Court in this Building, we have still another commentary on the growth of this City and County.

In 1852 Cornelius O'Flynn was Judge of this Court. He was an able lawyer and Judge. He systematized the business and prepared the first printed forms used by the Court. In after years he evinced some delightful peculiarities, one of the most marked of which was a habit of never committing himself upon any questions which were of no special importance. Wm. Gray was, at the beginning of the last half century, one of the foremost lawyers at the bar, learned, polished in manner and language and recognized also as the wittiest member of the Bar. Mr. Gray knew of the peculiarity of Judge O'Flynn, but lawyers from outside the City did not. Upon one occasion, I think in the fifties, a Democratic mass meeting was held in Detroit, and numbers came from the interior of the State to hear General Cass speak. After the meeting Mr. Gray was standing in front of the Russell House conversing with two prominent lawyers from an interior County who did not know of this peculiarity of Judge O'Flynn. The Judge was coming slowly up the street and Mr. Gray said to his friends, "There comes Judge O'Flynn. I'll bet you the wine you may ask him three questions and you cannot get a direct answer to any of them." The bet was instantly taken. As the Judge joined them, after a few words had been exchanged, one of the visiting lawyers said to the Judge, "Did

you hear General Cass to-day?" The reply came instantly, "I rarely attend political meetings." After a moment a second question was asked, "Judge, do you live where you did last year?" The reply was, "Wise men seldom change their abode." But one question remained, and after deliberation, as the Judge was leaving, the question came, "By the way, Judge, what time is it?" The Judge slowly pointed to the interior of the office and said, "There's the clock." And Gray won the bet.

Judge O'Flynn held the office of Probate Judge until January 1st, 1853. His successors were Joseph H. Bagg, Elijah Hawley, Jr., William P. Yerkes, Henry W. Dear, James D. Wier and Albert H. Wilkinson. Each held the office four years.

On the 2d of January, 1877, Edgar O. Durfee was placed on the Bench and he will in all probability continue to occupy this important judicial position until the people conquer a confirmed habit they have of voting for him. It is entirely unnecessary to say that this "confirmed habit," which "is honored in its observance," is one which is generally approved, During the quarter of a century Judge Durfee has presided over this Court he has discharged the duties of the office with ability, integrity and impartiality and has won the confidence and esteem of all.

The Bar at the beginning of the last half century was an exceptionally strong one. There were Frazer, the two Howards, Lothrop, Duffield, the Walkers, Russell, Backus, Harbaugh, Wilcox, Gray, Emmons, Van Dyke, Bishop, Holbrook, Stuart, Campbell, Douglas, O'Flynn, the Goodwins, Pond, Brown, Moore, Joy, Porter, Larned, Hand, Hall, Buel, Kent, Mandell, Palmer, Canfield and Trowbridge. As I recall these names the individuality of the persons, in a social as well as a professional way, comes to my mind and many incidents of a humorous as well as pathetic nature are recalled. You will pardon me for referring to a few of them.

Levi Bishop was one of the ablest men at the Bar. He was always fond of citing some decision of a Court to sustain his legal points. Nothing delighted him more than to advance some proposition which was not familiar to the Bar and to sustain it by the citation of authority. On one occasion he raised a novel point before Judge Douglas in the Circuit. Clarence E. Eddy, a young practitioner was his opponent. The point was so novel that Judge Douglas, a man of vast experience, said to Mr. Bishop that he could not sustain it without authority, as he did not consider it good. Mr. Bishop was in his element. He had found a single authority, in a distant State and believed he was assured of success. The matter was continued for a week, and Mr. Bishop promised

the Judge that he would produce the authority on the hearing; the Judge saying that without it he should deny the motion. Meanwhile Eddy had found this single decision. On the adjourned day the matter came up and Mr. Bishop told the Court that he could not find the report containing this decision, that it had been taken from the Bar Library by some one, but no record appeared on the Librarian's books to show who had taken it. Judge Douglas dismissed the matter, saying he could not grant the motion in the absence of some authority. Some days afterwards Mr. Bishop met Mr. Eddy and asked, "Eddy, what did you do with that book?" "Hid it," said Eddy. "Correct practice, Mr. Eddy," said Bishop. "Correct practice."

I have referred to Mr. Gray as the wit of the Bar. There was a very prominent member of the Bar, who was very unpopular and heartily disliked by his fellow members. His wife died, and the Bar, on account of the prominence of the husband, attended the funeral. In those days Detroit was a small city and it was the custom of the Bar to walk in funeral processions instead of going in carriages as at present. It was also the custom to walk at the head of the procession, preceding the hearse, and at the bridge over Dequendre Street to open ranks and allow the hearse and carriages containing the mourners to pass between the ranks of the Bar, while the members stood facing the procession with bared heads. The bearers also walked, three on each side of the hearse. In the case of the death of a prominent member of the Bar we always went to the cemetery with the procession and did not leave it at the bridge. Upon this occasion we marched at the head of the procession, and as we reached the bridge, opened ranks as usual for the procession to pass, and we then returned to the city. Mr. Lothrop was one of the pallbearers and walked by the side of the hearse. As the hearse passed the place where Mr. Gray stood he spoke in a whisper loud enough to be heard several feet distant, speaking to Mr. Lothrop, "George, put the old man in and we will go clear up."

One of the prominent members of the Bar was Henry D. Terry. He was a lawyer of great ability, but was absent from his office most of the time. Upon one occasion a fee bill was being prepared by a committee of the Bar. Among other items was the following: "Absence from office, $10 per day." Mr. Gray was chairman of this committee, and in reporting it to the Bar meeting he said—stopping in his report—"Mr. President, my friend, Major Terry, is not able to be present to-day, but he wished me to say that, whatever other items of this fee bill were rejected, he desired this item of $10 a day for 'absence from office' should be retained, as it would give him a good income." Upon one occasion, going to Mr. Terry's

office Mr. Gray found a card on the door with this inscription: "Back between 12 and 1." Gray wrote underneath, "12 to 1 he is not."

One of the prominent members of the Bar along in the sixties was a man of good ability, but very nervous whenever he was ill. Mr. Gray knew this, and upon one occasion when this member was detained at his house by an attack of influenza, not a serious attack at all, Mr. Gray took Robert P. Toms with him and proposed that they should call upon the sick man. As they entered the sick room Mr. Gray said, in very lugubrious tones, "We heard you were dangerously ill and thought we would come up and see just what you would like to have said at a Bar meeting if you died." The sick man replied, "Don't talk of anything of that kind, only when I die don't say anything about me excepting what is true." "But," said Gray, "That could not be done." "Why?" asked the invalid. Mr. Gray replied, "Because you know there is a statute against 'indecent publications.'" It is needless to say that had there been anything in the life of the sick man to justify any such remark it would never have been uttered.

I have referred to the fact that the Legislatures of this State have attempted to legislate for the Bench and Bar and indirectly for the people of this City in matters not desired by them.*

I fully appreciate the fact that this is not the time or occasion to speak to the "people" of these matters or to say aught which might have a purely political bearing, but I also realize the fact that it is entirely proper to speak, professionally, to the Bench and Bar of this City of what, many fully believe, will be one of the most important duties to devolve upon them during the first years of the twentieth century. And this, because the Bench and Bar have ever been, as history tells us, either instruments of oppression and injustice or the bulwarks of freedom. He reads English history blindly who does not read this upon its pages. And this contest for individual liberty has been fought in the battle between Legislatures and the municipal corporations created by them, largely. The record of the origin of municipal corporations in England and the United States attest this fact.

I am fully aware that in our Courts and at the Bar there are different opinions as to the relation of the State to the municipality. One deems the State supreme to create or destroy the municipality at pleasure; the other that the municipality has the absolute right to self-government and, once created, that the creator has no right to deprive it of its freedom in local affairs, against the will of the citizens of the municipality. I know that the Supreme Courts of the United States and of

* Reference is here made to the so-called "Ripper Legislation."

the State of Pennsylvania have held to the former doctrine. Still, with due respect for the honesty and ability of the highest tribunal of the Republic, is not this ruling fraught with danger to the life of our cities? Is there no danger that, under color of this opinion, the individual liberty of the citizen may be taken away and the right to local self-government perish?

Do not understand me as saying that the Legislature which creates municipalities cannot modify or destroy them, but it ought never to be done excepting at the request of the municipality itself. To the honor of the Wayne County Judiciary let me say it has ever safeguarded the political rights of the inhabitants of this City.

In tracing the relation of the Bench and Bar to each other and the influence of each upon the other and the characteristics of each, I am led to this conclusion. While some of the decisions of the Bench may have shown a disregard of precedent, still they were all tempered with a moral sense, which rendered every conclusion, not only logical, but right, and justified such disregard. And the mental characteristics of the Bar furnished great help to the Bench, since the presentation of diverse views by men of equal capacity, aided materially in the formation of just decisions and gave good reason for opinions without danger of unjust criticism.

At the entrance of the harbor of Kingston, Jamaica, there stood, during almost the whole of the seventeenth century the rich and beautiful city of Port Royal. It was the resort of pirates, who brought their ill-gotten gains there and built magnificent towers and palaces and even cathedrals. The City was ruled by the strong will of the pirates, who infested it, and personal liberty disappeared. But in the closing years of the century, in 1692, two hundred years ago, the Island of Jamaica was visited by an earthquake and the City of Port Royal slowly sank beneath the waters of the Caribbean Sea and its inhabitants perished.

And now, in the twentieth century, on a bright day the traveler on the ocean over the spot where the City stood, can see, far down in the clear water, the remains of that City upon the bottom of the sea, with fishes swimming among its towers, and great sea-weed waving from its walls. And the superstitious negroes of Jamaica will tell you that before an ocean storm there can be heard the sunken bell of the magnificent cathedral which sank with the City on that awful day, tolling beneath the waves as a warning to those who would seek to destroy the life of a great City. May the bells of our beautiful City never toll the requiem of our municipal liberty.

To-day I have endeavored to carry you back over the memory bridges which some of us have been building from

Now to Then. And in leaving our old house for the new, may I give you Carleton's poem, with a slight paraphrase:

"Out of the old house, brothers, moved up into the new,
All the hurry and worry is just as good as through,
Only a bounden duty remains for you and I,
And that 's to stand in this Court Room here and bid the old house good bye.

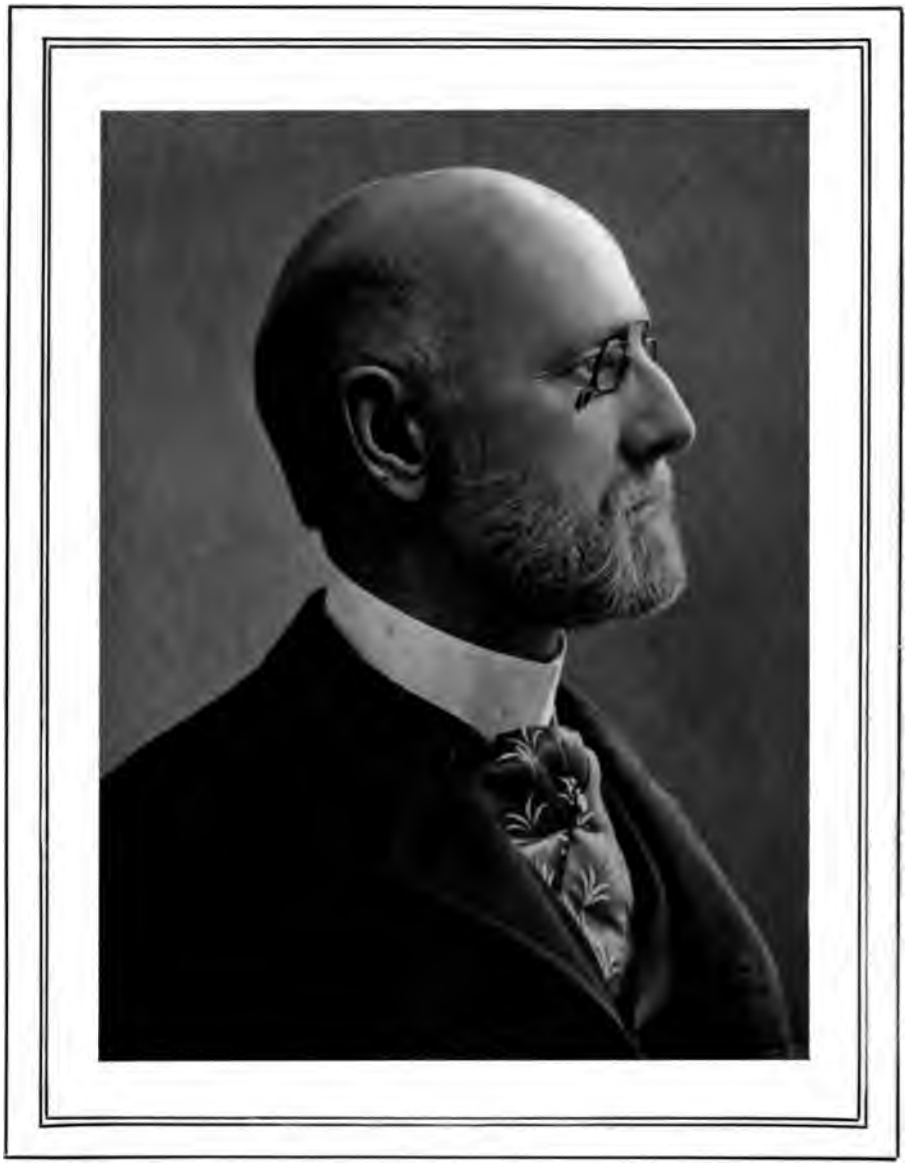
"Look at that old stone house, how little it now appears,
But it's never gone back on us for twenty or thirty years,
And we won't go back on it now and go to poking fun,
There's such a thing as praising a thing for the good that thing has done.

"Yet a deal has happened to make that old house dear.
Trials, battles, triumphs—what haven't we had there?
Not a stone in that Old Building but its memories has got,
And not a nail in the old floor but touches a tender spot.

"Fare you well, old house, you're naught that can feel or see,
But you seem like a human being, a dear old friend to me—
Your walls may disappear, like the footprints in the sand,
May we find our home eternal in the house not made with hands."

And as we pause on the threshold of this temple door, looking back, we see that each house of the law has been grander than the last. May this be the life experience of each of us. Holmes has given voice to this hope:

"Build thee more stately mansions, O my soul,
As the swift seasons roll—
Leave thy low vaulted past—
Let each new temple, nobler than the last,
Shut thee from heaven with a dome more vast,
Till thou at length art free,
Leaving thine outgrown shell by life's unresting sea."



HON. ALFRED RUSSELL.

PRESENTATION OF PORTRAITS.

Address by Alfred Russell, Presenting Portraits of Eminent Attorneys.

A portion of the morning exercises was occupied by the presentation of the portraits of four eminent members of the Detroit Bar, whose families were all represented among the listeners in the Court Room. The presentation address was made by Hon. Alfred Russell, and was as follows:

MR. PRESIDENT AND HONORABLE JUDGES AND GENTLEMEN OF THE BAR:—The morning is far spent and I will occupy your attention but a short time. From remote antiquity it has been the approved custom of civilized peoples to preserve likenesses of those who served well their generation.

In the old home of the common law, the portraits of its great masters have looked down, for many centuries, upon successive throngs of students and practitioners.

Following these precedents, we adorn our walls to-day with pictures of four great ornaments of this Bar, presented to us by their relatives or friends, to whom we render our grateful acknowledgments. There will always be distinguished men at this Bar, but never four more eminent than those we honor to-day—James Adams Van Dyke, Theodore Romeyn, James Frederick Joy and George Van Ness Lothrop.

I may venture to speak of them, as it was my good fortune to know each one, as a junior knows his elders, and was the recipient of their confidence and friendship, and entertained for them the highest respect. I studied my profession with Joy and was examined for admission by Lothrop.

These men all came to this City from different States of the old thirteen—Van Dyke, from Pennsylvania; Romeyn, from New Jersey; Joy, from New Hampshire, and Lothrop, from Massachusetts; and exemplified the fact that the composite citizenship of the West, like the ancient Corinthian brass, made of gold, silver, copper and iron, is more valuable than any of its ingredients.

Men more different in early surroundings and in physical and mental characteristics can hardly be imagined; but they were all alike in their devotion to the noble profession from which they derived their success in life.

They were all born in that middle condition, which is equally removed from the depression of poverty and the blandishments of riches, and which, according to David Hume, is best adapted to produce extraordinary men. They were all of good revolutionary stock, from ancestors well-read and well-bred and well-fed, for many generations.

When they came to the Bar the law was properly called a learned profession, and their great natural endowments had been disciplined and developed by severe training and by extensive acquirements in branches of knowledge other than the law, before they entered upon its study.

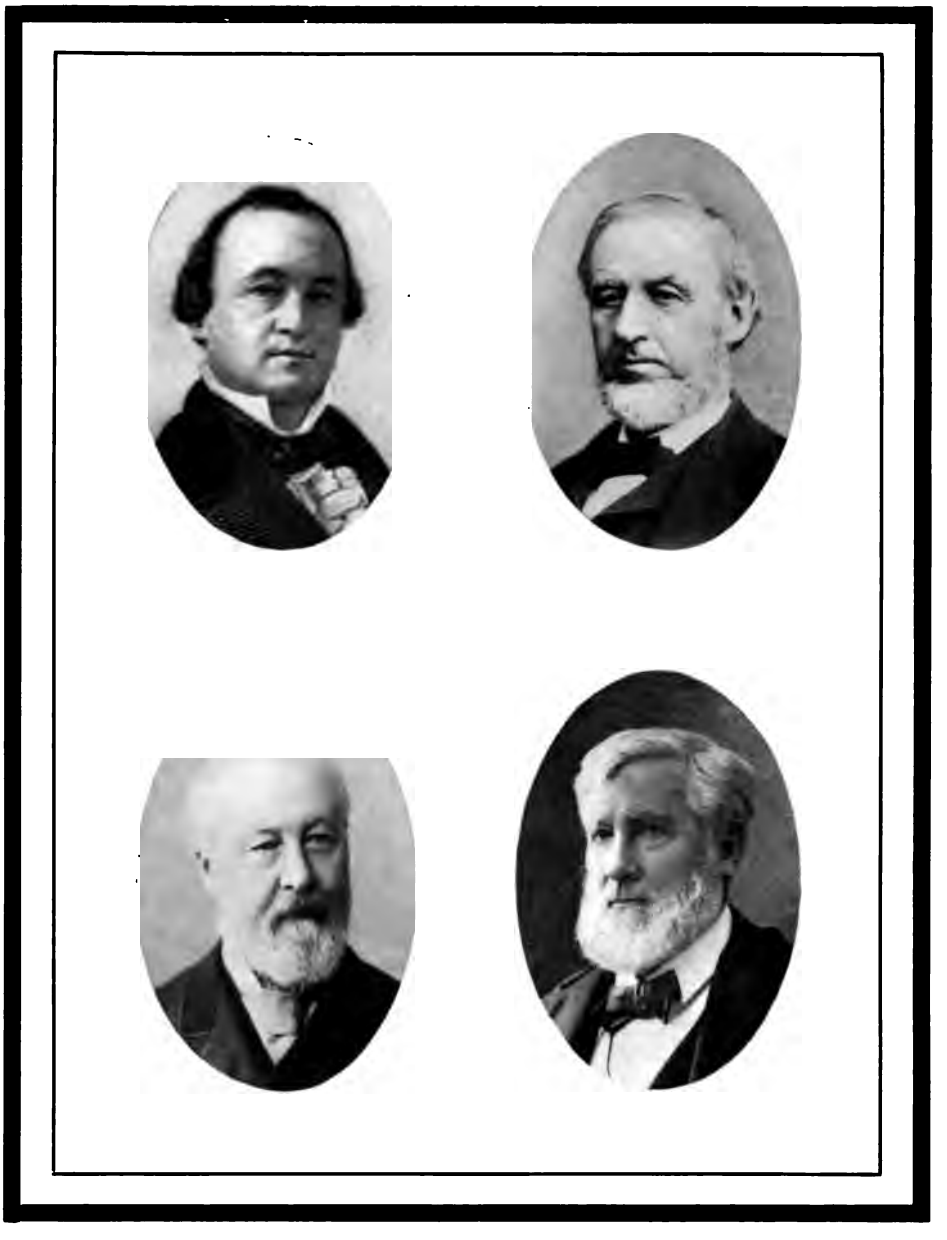
They were all college men—Van Dyke was at Madison College, New York; Romeyn, at Rutgers College, New Jersey; Joy, at Dartmouth College, New Hampshire, and Lothrop at Brown University, Rhode Island. Webster, in his celebrated oration on Adams and Jefferson, ascribes their influence in part to their college education, which gave them, he said, a broader view and a wider range on all problems presented, and added polished armor to native strength. I do not mean to intimate that a college education is by any means essential to either greatness or usefulness in the profession. I only claim that it is the most appropriate preparation for it.

These men had for their compeers men equally strong with themselves, like Howard (the author of the fourteenth amendment to the United States Constitution), and Emmons, and the battles royal in the plain brick Court House at Griswold and Congress Streets, where the Telegraph Block now is, will never be surpassed in these marble halls of justice. These men held law and facts in the iron grasp of memory and not in reams of stenographic notes.

It is not possible in the allotted time, to describe in detail the busy and useful careers of these men, nor their individual methods, but I may mention that each one stepped aside from the beaten path of the profession to the benefit of the community at large.

Van Dyke effected the incorporation of the fire department and the erection of its hall, and was its president; and the department caused the painting of yonder portrait, by Bond, of New York, and has now presented it to us. Van Dyke also served as City Attorney, Alderman, Mayor and Water Commissioner and as Prosecuting Attorney of this County and Solicitor of the Michigan Central Railroad.

Romeyn steadily declined political office, but upon a notable occasion, at the outbreak of the civil war, in a public



A Historic Group.

JAMES A. VAN DYKE. THEODORE ROMEYN.
GEORGE V. N. LOTHROP. JAMES F. JOY.

speech at Ann Arbor, of prodigious power, rallied the wavering Democracy to the support of the war measures of President Lincoln.

Joy, beginning with the Michigan Central, organized and constructed more railroads in this State and in the States west of here than any other citizen of his time, to the great and lasting good of the public. He also served as City Recorder, and in the famous Legislature of 1861, which raised money for the prosecution of the war.

Lothrop was a great leader of the Democracy, and sat in the celebrated convention in 1860 at Charleston, South Carolina, marking the disruption of the Democratic party, and when President Cleveland succeeded to office Lothrop was made Minister to Russia.

The lawyer is most and best made known to the tribunals and the public by his faculty of round, clear and dauntless speech, or at least it was so in the day of these men, and to this faculty, as differently exhibited in these men, I will make especial reference.

Van Dyke was easy, rapid and exceedingly ornate; often vehement and impassioned, and the favorite of juries. It is well authenticated that the magnificent orations of Edmund Burke emptied the benches; but Van Dyke chained his auditors to their seats. Whoever heard him open wished to remain until he closed.

Romeyn's diction was that of a learned and able counsellor, deeply versed, not only in the law, but in polite literature. In general, he was dignified and impressive, but upon occasion formidable in retort and powerful in invective.

Joy carried the points by sheer energy and determination. Before both the jury and the Bench he was aggressive, dogmatic and effective, delivering sledge-hammer blows.

But in Lothrop all excellencies of legal eloquence were combined. With a clarion voice, a manner always gallant and sometimes fiery, possessing equal accomplishments in every department of the law, ready to be drawn upon on the instant, he was a consummate forensic orator, without a peer and without a second. As was said of Lord Clarendon, when he spoke "the fear of all was lest he should make an end." It was his to convince the Bench, persuade the jury and to sway the popular assembly.

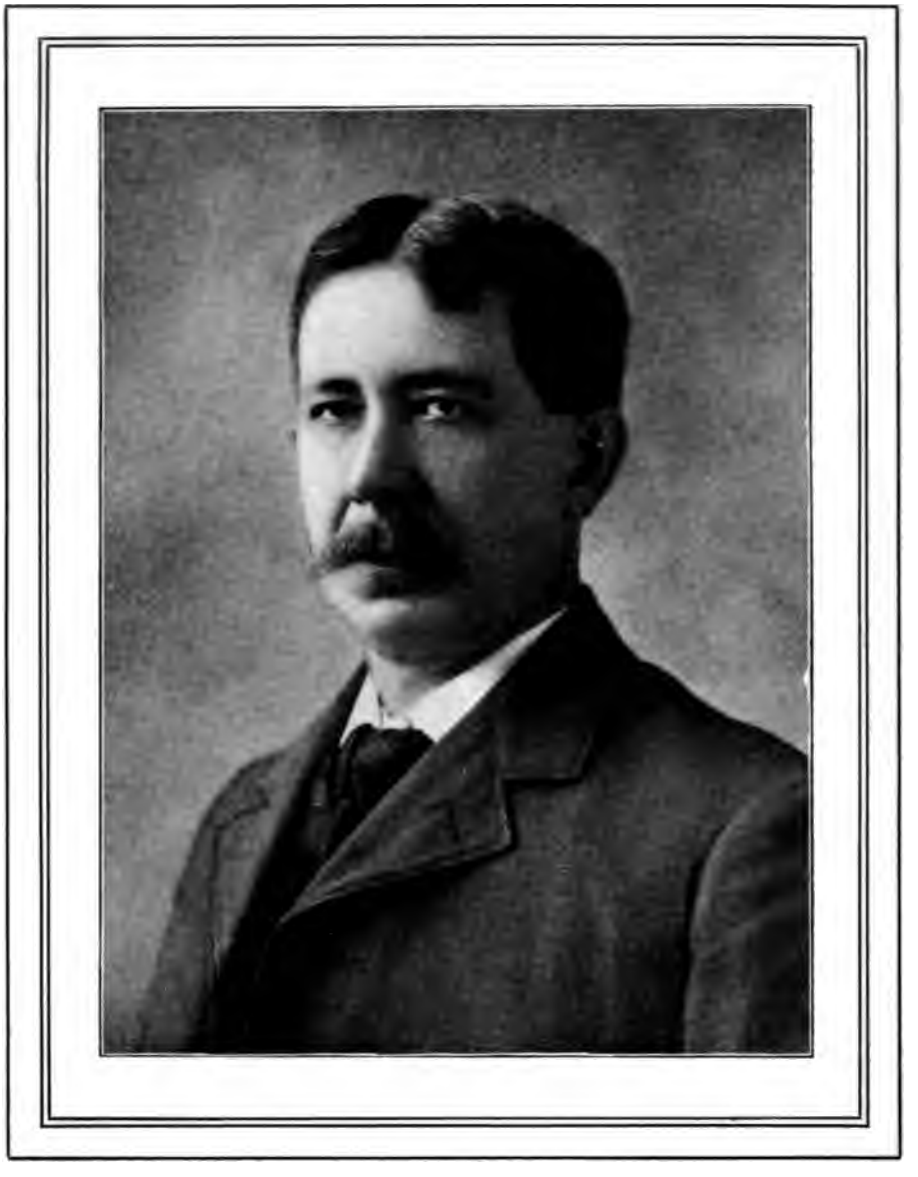
These men were all connected with the formative period of our State jurisprudence and guided the Courts and Legislature of the new State in molding our law. Every one of them filled a large space in the public eye and passed a life of usefulness and distinction in his adopted City and State. Romeyn, Joy and Lothrop attained advanced age, but Van Dyke died at forty-two, having achieved professional eminence, riches, pub-

lic honors and universal popularity in twenty years from his admission. According to the Roman standard his life was long. Their saying was: "He has lived long who dies lamented by his fellow citizens."

Gone are they all. Gone are the judges, who gave their decisions, right or wrong. Gone are the people and things contended and decided about. Gone, also, are the fierce passions and bitter rivalries engendered by their forgotten controversies. But the memory of their public services, their fidelity to their clients, and the Courts, and to society at large—in one word, to duty—will long remain and should always be cherished by this Bar.

When the English artist Wilkie visited Spain, and the treasures of painting in the monastery attached to the palace of the Escurial, he was conducted by an aged monk, and they lingered before a large picture of the "Last Supper" in the refectory. The monk said: "You admire that picture; so do I; but my admiration is mingled with other feelings. When I entered here a young man, here hung this picture. All they who were with me in this monastery at that time have passed away, and so have nearly all who came after me; and here I remain, and there is that picture, and when I look at the figures in it, I remember those who have been with me, likewise looking at it. I am sometimes tempted to think that we are the shadows and that picture the reality."

This massive building will outlast everyone in this large assembly, and those who come long after us at this Bar will look at these pictures with feelings akin to those of the old monk.



HON. HORACE M. OREN.

AFTERNOON EXERCISES.

A Greeting for the State by Attorney General Oren.

After a noon recess, members of the Bar again assembled in Court Room No. 6. As originally designed, an address of welcome on behalf of the State was to be given by Governor Bliss, but as he was unavoidably detained in Washington by an accident, Attorney General Horace M. Oren spoke briefly in his place as follows:

MR. CHAIRMAN, LADIES AND GENTLEMEN: Owing to an unfortunate accident, the Governor of the State is unable to be present to extend to this gathering the greeting that is due from the State of Michigan, and on that account I have been asked to say for him and for the State words that are fit and meet to be said.

While the immediate occasion of this gathering is local, and while the congratulations of the day are due to the County of Wayne and to the City of Detroit, that public necessity and civic pride have joined hands in the erection of this mighty and beautiful County Building; yet this notable gathering, in which is represented the judiciary of the highest courts of our Nation, with representatives from the Bench and Bar of not only Michigan, but sister States, and particularly those that like Michigan were carved out of the old Northwest Territory, with representatives also, from our border country, Canada, through whom we feel, as it were, the presence of that grand old mother country England, from whom so many of our beneficent laws and constitutions have descended; all indicate the fact that this gathering has much more than a mere local significance.

We of Michigan and the Northern Central States find our lineage in what was known as the great Northwest Territory, and we are prone to say that we too have our Plymouth Rock and our Jamestown; and it is one of the proud boasts of the State of Michigan, that both of these places are found within her borders. In 1668 when Father Marquette stepped from his

bark canoe at the foot of the rapids of St. Mary's River, on what is now the northermost boundary of Michigan, and there erected his humble chapel, his footsteps sanctified the ground upon which he trod fully as much as the bended knees of the Pilgrim Fathers the sands of the New England shore. To Cadillac, that worthy compeer of sturdy John Smith, the founder of Jamestown, we owe an equal allegiance, for he founded our Jamestown, only we call it Detroit; and by his act, here was the birthplace of civil government in the Northwest.

The event of to-day is not alone of to-day. The spirits of our ancestors that relive in our ever living lives rejoice with us to-day in the augury of this dedication, that the institutions that they created and nourished with their lives and blood have been preserved to us in full flower and vigor. The event of to-day is not alone for the people of Wayne County or the City of Detroit, or for us of the State of Michigan. We have with us those who by right of patrimony are entitled to be here and bear a part in this celebration. To-day the fires are kindled and burn upon the hearthstone of what to us all is the old homestead. We cannot welcome you as stranger guests. We can only say that you are here with us as brothers in common right.

That is the word of greeting that Michigan brings to you to-day, and it seems to me it contains the spirit of what may be properly said and that anything more would be surplusage.

The remaining exercises of the afternoon consisted of the delivery of three notable addresses by distinguished members of the Bench and Bar from other portions of the country. They were: "The Early Bench and Bar of Detroit," by Henry B. Brown, the oldest surviving Judge of the Wayne Circuit Court, and now Justice of the Supreme Court of the United States; "The Bar in its Relations to Public Affairs," by Hon. James L. Blair, of St. Louis, Mo.; and "The Relation of the State and Federal Judiciary to Each Other," by United States Circuit Judge Horace H. Lurton, of Nashville, Tenn. These addresses follow in the order named:

JUSTICE HENRY B. BROWN.

THE EARLY BENCH AND BAR OF DETROIT.

Address by Justice Henry B. Brown, of the United States Supreme Court.

MY BRETHREN OF THE DETROIT BAR: The installation of courts of law in a new edifice specially built for their accommodation is an epoch in the history of every local bar, and is worthy of something more than a formal notice. It is meet that justice shall be administered amid surroundings appropriate to its dignity, and be enshrined in a building that bespeaks the majesty of the law; that bears witness to the growth and increasing prosperity of the city, and that may serve as a perpetual monument to the liberality and public spirit of its citizens. It is true that justice is impersonal; that courts are merely the hands through which its bounty is distributed, and that these courts are entitled to the same respect, whether held in marble halls or beneath the spreading branches of a tree. At the same time, it is impossible for the average man wholly to dissociate justice from the individual judge who administers it, or fail to consider not only his intellectual qualifications but his manners, deportment, dress, and even the character of the room in which his ministrations are held. It is a mistake to suppose that the great mass of uneducated people wish to drag down their servants—and we are all servants of the people in our public functions—to their own level. The man who thoroughly respects himself and the dignity of his office can hardly fail to inspire respect in others. The man who belittles himself by affectations of dress or demeanor, evidently foreign to his nature, is generally accepted at his own estimate, and as belonging to the class to which he has sought to descend. The people who should fail to provide their courts with an abiding place commensurate with their importance, would be justly chargeable with a failure to appreciate the immense contribution made by a well ordered and high-minded judiciary to the maintenance and perpetuity of free institutions.

I once knew a judge in a mountain district in the South who, it was said, prepared himself for the exercise of his judicial functions by divesting himself of his coat, waistcoat, collar, shoes and stockings, and arming himself with a corncob pipe as an aid to his deliberations. Having thus equipped himself, he placed his feet upon the table in front of him, lit his pipe, ordered the court to be opened, and announced its readiness for business. His object in all this was evidently to impress the jury and spectators with the idea that he was no better than the humblest of them, and demanded nothing of them as a representative of the law that they would not accord to him as one of themselves. I do not know that he was not as learned and upright a judge as if he had been clothed in the conventional wig and gown of the English bench, or the customary suit of black affected by American judges. I do not know that he was oftener reversed by the Supreme Court than the rest of us, but I cannot but feel that this endeavor to bring himself down to the level of his audience smacked more of bravado than democracy, and that the roughest mountaineers would have looked upon him with more respect if he had tried to raise them to his level rather than descend to theirs. He made the common mistake of confounding the man, who may have been no better than the average mortal, with the magistrate, who stood for the sovereignty of the law and was entitled to the outward marks of respect appropriate to the position.

Insufficiency of population, or the poverty of the county may require that the local courts be held in humble quarters; but I have noticed in Michigan that the first sign of increasing wealth and general prosperity is the erection of commodious school buildings and suitable court houses; a tribute in one case to the love of education and its value as a basis of a free government, and in the other, to the respect for the law characteristic of the Anglo-Saxon race.

From the plain two-story brick building upon the Southeast corner of Congress and Griswold Streets, in which the sessions of the Wayne Circuit Court were held in 1860, to the City Hall erected a few years after, was a transition from poverty to comfort, from the narrow quarters of a provincial town to an edifice commensurate with the needs of the court of that time. From the City Hall to this building is a transition from quarters which were found to be wholly inadequate, to spaciousness and elegance, and to a building which represents the happy medium between parsimony and extravagance. No profusion of expensive marbles or elaborate decorations is needed to impress the idea of dignity and solemnity which should accompany the administration of justice. I think the

tendency of later years has been to err in the direction of splendor where there should be simplicity; of extravagance where there should be economy. Compare, for example, the chaste severity of the Supreme Court room at Washington—a room which dates back to the early part of the last century, ornamented only with the marble busts of the Chief Justices—with the profuse decorations of some of our modern court rooms, and one can hardly fail to avoid the conclusion that the former is intended to represent the true majesty of the law, while the latter stands rather for the skill of the architect and the taste of the decorator.

I thank you for your courtesy in asking me to be with you and take part in the formal opening of this building, though I attribute my selection not to the fact that I am specially qualified to speak of the early Bar of Detroit, but to the circumstance that I happen to be the oldest living judge in commission who has ever sat upon the bench of the Wayne Circuit: a fact I had overlooked until reminded of it by your letter of invitation. It is one which suggests that the object of this address may properly be to recall to the older, and make known to the younger, members the successive steps by which the principal court of this county has risen from a comparatively humble origin to its present importance, and the character of the men who have contributed to that result. To many of those now present this will seem a twice told tale. There are still many now living who were acquainted with the Bar from the adoption of the present Constitution, and to whom the career of its most distinguished members during the forties and fifties is something more than a tradition. Coming here as I did in the winter of 1859 and '60, these latter who had been prominent in securing the admission of the State into the Union, had taken part in the Constitutional Convention of 1836, and again in that of 1850, and had, in that interval, been leading figures in the political and judicial life of the State, had mostly retired from practice, found comfortable seats upon the bench, or were enjoying the repose they had justly earned in a long professional career.

Detroit was then a fairly prosperous city of about forty-five thousand people, nine-tenths of whom lived within the limits of Chene Street on the east, High Street upon the north, and the Michigan Central Railroad upon the west, though there were scattered houses upon the main avenues far beyond these limits. The present site of the City Hall was occupied by an old brick building once used as a school, and by the former passenger station of the Michigan Central, which entered the heart of the city through Michigan Avenue. Railway communication had been recently established with Niagara Falls, and

the magnificent steamers which had theretofore connected Detroit with Buffalo were rotting at the wharves of the Michigan Central, and were soon after broken up and abandoned. Sleeping, dining and parlor cars were wholly unknown and the traveller by night perforce contented himself with the broken slumber of a reclining chair. Society was largely sprinkled with young officers from the Fort, nearly all of whom became prominent either on the Northern or Southern side in the Civil War which broke out the following year, and some of whom attested with their lives their devotion to duty and the sincerity of their convictions. Most of the prominent young men of that day were members of the newly organized boat club, whose hops at the Russell House were the great social features of the season: "a thing of beauty and a joy forever." Alas! that the pictures of these men who were the great social lights of their generation—the *jeunesse doree* of Detroit—should have perished in the fire which destroyed their club house on Belle Isle.

The Federal Courts of that day were held in a building still standing, opposite the Biddle House, known as the Young Men's Hall, though the court offices were still retained in the second story of the building since occupied by the First National Bank, which had been originally purchased for a Federal court house. Under the law then in force, but which, since the creation of the Courts of Appeals, has been treated as obsolete, the Associate Justices of the Supreme Court were obliged to visit each district in their Circuit at least once in two years; and in the summer of 1860, it was my great good fortune to sit through an ejectment trial conducted by Mr. Justice McLean. It was the first time I had ever seen a justice of the Supreme Court, and I recall how deeply I was impressed by his high intellectual forehead, and his grave, though kindly face and dignified manner. If greater familiarity and longer acquaintance with the members of that court have somewhat lessened the reverence I then felt, the impression made upon me by Mr. Justice McLean's commanding appearance and courteous bearing has never been effaced. While he is not reckoned among the great judges of that court, nor McLean's reports as of equal authority with those of Story and Curtis, he was a man of perfect integrity, high character and of far more than ordinary ability. His dissenting opinion in the great fugitive slave case of Prigg vs. The Commonwealth of Pennsylvania, the precursor of the still more famous case of Dred Scott vs. Sanford, stands more completely than any other for the high water mark of his judicial ability, and will ever remain a monument of his learning and strong sense of justice. In that dissent he announced the then novel doctrine that there was a

distinction between black men and black horses, though both were property, and that State Legislatures were at liberty to recognize that distinction and to provide that the former should not be abducted from the State without proof of their status as slaves.

Soon after the breaking out of the Civil War, he was succeeded by Mr. Justice Noah H. Swayne, whose early visits here created a most favorable impression of his judicial acquirements. In bearing and appearance, he was the perfection of dignity and courtesy. Once seen, he was not a man to be easily forgotten. He was patient in hearing and prompt in the disposition of cases. No one questioned his uprightness. If some of his opinions exhibit evidence of having been written under a pressure of engagements, others are models of clearness and vigor of expression.

After a most acceptable judicial career of nineteen years, he resigned his seat and was succeeded by Stanley Matthews, who came to the bench with a reputation as an advocate second to none in the Western States. While his service was comparatively short, it was long enough to completely establish his reputation as a judge of the first class and to disprove certain charges of unfitness, which in the heat of current political excitement, had nearly defeated his confirmation. His opinions are not numerous, but several of them are of great importance, and all give evidence of sound judgment and a masterful intellect.

Meantime, and in 1869, the office of Circuit Judge had been created by Congress, to relieve the Associate Justices, whose visits from that time became less frequent. No resumé of the judicial history of Detroit would be worthy of notice which did not mention the name of Halmer H. Emmons, who by an unusual stroke of good fortune was appointed the first Circuit Judge of the Sixth Circuit. This remarkable man came to Detroit in early life, soon established a large practice, and in the forties and fifties was one of the leaders of the Bar, though at the time of his appointment he had accepted the honorable though comparatively secluded position of a railway counsel. I consider him the most brilliant man with whom I ever came in contact, although like most brilliant men, his genius was tinged with a certain waywardness. As a *nisi prius* judge, he was without an equal. But his methods were revolutionary. By a series of questions to counsel, he eliminated from the case everything that was impertinent or uncontradicted; evolved and presented distinctly the real matter in dispute, and either disposed of it as a question of law or confined the evidence before the jury to the exact point in issue, and thereby withdrew from their consideration everything that

was extrinsic or immaterial. In this way, he disposed of his cases with remarkable rapidity, and counsel who came into court prepared for a three days' trial, were often either elated or dejected by a verdict within as many hours. The verdict, too, was the end of the litigation and not the beginning of it, as Holbrook used to say of verdicts in the Wayne Circuit. Judge Emmons was intolerant of want of preparation, and if anything excited his judicial wrath it was for counsel to propose to read a pleading at length instead of stating its contents. To the incapable or unprepared, he was without mercy. He held it to be the duty of counsel to state their cases in their own language, and not in the formal language of a pleading. When this was done, he usually intimated his impression either one way or the other, and the case was apt to resolve itself into a judicial debate between the court and counsel on one side, in which the latter were usually worsted. He was patient, however, and not infrequently spent an entire morning in listening to and answering the arguments of one counsel without calling upon the other. As may be imagined, his methods of dispatching business were at first unpopular, but the longer he remained upon the bench, the more they were appreciated, and he died with the reputation of being one of the ablest men who ever sat in a Michigan court. He was a man of wonderfully incisive intellect and a vast knowledge of decided cases, for many of which he had a profound contempt —a contempt, too, which he had no hesitation in expressing. Indeed, he had little respect for mere authority, and occasionally incurred the ill will of his brother judges by his outspoken dissents and somewhat peremptory reversal of their rulings. His judgments were not always as sound as his acuteness and learning would lead one to expect. As a politician, he was looked upon as too independent (or shall I say erratic), and was not a favorite in the counsels of his party. Personally, I grew to be very fond of him, sincerely lamented his death, and esteemed him a great man who, in another sphere of action, might have rendered brilliant service to his country.

He was succeeded as Circuit Judge in 1877 by John Baxter of Tennessee, a man of widely different temperament, but of not less eccentric character. He was a perfectly honest man and one who meant to do his duty, but in his own way. He was possessed of strong common sense, a good knowledge of the law—so good indeed that he was often impatient of further enlightenment. Under a placid and attractive exterior, he concealed an iron will, a determination upon which neither arguments, persuasions, nor cajoleries had the slightest effect. His knowledge of the law was so comprehensive, his convictions so well assured, that he often felt himself able to dispense with

the arguments of counsel, and sometimes disposed of cases without hearing from the defeated party; sometimes without hearing from either party. His methods were unusual, and when practiced by a man of less integrity or a weaker intuition of justice, would have been dangerous. He was so well assured of his own opinions that if the precedents were against him, he had no hesitation in making a new one adapted to the particular exigency of the case. In inter-circuit cases, he sometimes asked his brother judges from other circuits to sit with him, and then disposed of the case without even asking their opinion. Naturally, this did not tend to foster a friendliness of feeling or harmony of sentiment. His sense of justice, however, was so strong that his conclusions were generally correct and accepted as final by both parties. His fault was over-confidence in his own judgment, an idiosyncrasy which, it was said, ultimately cost him his life.

He was succeeded by Howell E. Jackson of Tennessee, an ideal judge in every particular. He was endowed with the judicial temperament in its highest development fortified by an excellent knowledge of the law. His integrity was beyond the shadow of a doubt. He was a courteous, patient listener, a careful student, and slow in reaching a final conclusion. His manners were most engaging, his temper amiable and his conversation garnished with a fund of anecdotes apparently inexhaustible. Upon the whole, the country might be challenged to produce a more accomplished judge. More than anyone I was ever brought in contact with, he filled out Shirley's eloquent description of a judge: "A man so learned, so full of equity, so noble, so notable; in the process of his life, so innocent; in the manage of his office, so incorrupt; in the passages of state, so wise; in affection of his country, so religious; in all his services to the king, so fortunate and exploring, as envy itself cannot accuse, or malice vitiate."

Indeed, these three Circuit Judges were all, each in his own way, remarkable men, and it was fortunate for the profession that the newly organized court started under such auspices.

In 1860, Ross Wilkins was District Judge of the United States for the then District of Michigan. He had come here from Pennsylvania as a Territorial Judge, had been active in promoting the admission of the State into the Union, and had been appointed to the District Court then created. He is said to have been in his prime a man of unusual ability and great force of character, but although he remained upon the bench until 1870, he was already an old man, irritable in temper, and so much broken in health that the business of the court fell sadly in arrears, and he was forced by his infirmities to resign under the retiring pension act.

John W. Longyear of Lansing was appointed to his place, and served most honorably for five years, when his health, too, gave out and he died. He came here with the reputation of a sound country lawyer of sterling integrity, but with no experience in the peculiar jurisprudence of the Federal courts. He proceeded with great caution at first, but soon became a past master in admiralty and bankruptcy law, and died with the reputation of being one of the most accomplished District Judges in the country.

Coming now to that court which concerns us most nearly —the Wayne Circuit—in 1860 it was held by a single judge, the Honorable Benjamin F. H. Witherell; and who among the older members of the Detroit Bar can ever forget his dignified bearing, benignant smile and friendly address? He came of an old Detroit family, his father having been Secretary of the Territory, had lived here since the early years of the century, and was never known to have done a dishonorable act. He was perfectly honest, though careless in his business methods, and his perceptions of justice were rarely at fault, though he was too indolent to be a really great judge. His memory was replete with anecdotes of the early settlers, and he was never so happy as when recounting stories of the old territorial life. He knew and was known by everybody, and no one who ever passed him on Jefferson Avenue, where he lived for many years, failed of a winning smile or a cordial greeting. It was one of his pleasantries, and one which lent itself to his natural bent, to catch the Bar napping, and if another case were not ready when the jury went out, he would call the entire docket and continue the cases over the term, though a dozen might have been ready upon a day's notice. But it was impossible to be angry with the dear old man whose only weakness was an uncontrollable dislike of hard work. He died in 1867, respected and beloved by all and mourned by everyone with whom he had been brought into social contact.

Charles I. Walker, one of the leading members of the Detroit Bar, was appointed to succeed him. He was a clear-headed, conscientious man, and made an excellent judge. As an advocate, his ability to state the facts of a complicated case equalled that of any man I ever knew. Comparatively few members of the Bar appreciate as he did the value of a perfectly lucid statement, or make themselves masters of the salient facts, so as to be able to disentangle them from immaterial matters, and present them in their logical order. It frequently happened with him that when such a statement was made, the case was practically argued. Judge Walker carried this faculty from the bar to the bench, and his charges left the jury in no doubt as to the real issue in the case. His

own views were expressed with entire frankness, although he never sought to usurp the functions of the jury. Becoming satisfied, however, that the office involved too great a pecuniary sacrifice, he resigned in 1868, and I was appointed at the age of thirty-two to the vacancy, which would terminate in the coming November election.

My title to the seniority of the Wayne Circuit Judges rests upon less than five months' service, which covered the summer vacation of 1868. The business at that time did not exceed the capacity of a single judge, though the Superior Court was created not long thereafter. It would ill become me to speak of my qualifications for the office, though apparently the electorate of Wayne County did not have a high opinion of them, as I was defeated at the November election by a large majority. The people would have none of me, and I was relegated to private life amid the applause of my political opponents. It is quite needless to say that I became from that time an earnest advocate of an appointed judiciary. But short as my tenure of office was, it brought me into the friendliest relations with the Bar, relations which have continued to this day, as your flattering invitation bears witness.

In 1860, Detroit had the reputation of possessing the most talented Bar west of the Lakes. My own judgment has confirmed that estimate. The early settlers of the Territory, those who emigrated there after the conclusion of the last war with Great Britain—largely increased by the tide of immigration in the early thirties, contained a considerable number of active, energetic, able men of whom General Cass was far and away the most distinguished representative. These men had secured the admission of the Territory as a State, and had given final expression to their theories of government in the Constitution of 1850. Among them were many excellent lawyers, some of whom became prominent in the political life of the State. The names of most of them appear in the first half dozen volumes of the Michigan Reports. But most of this generation had passed away and been succeeded by the Bar as I first knew it.

The leader of that Bar had been Alexander D. Fraser, a sturdy Scotchman, who had emigrated here in 1823, and whose name appears in most of the prominent cases prior to the Constitution of 1850. In the great Railroad Conspiracy case, the most famous that was ever tried in the Michigan courts, he took a leading part. I recall him as a man of positive manner, erect figure, active and alert, with the step and bearing of one much younger than himself. As a lawyer, however, he had already become little more than a tradition. Of that generation, there were still surviving William Woodbridge, a Senator of the United States; Daniel Goodwin, who had been made

Judge of the District Court for the Upper Peninsula; Elon Farnsworth, Chancellor of the State under the old regimé, a delightful old gentleman; Samuel T. Douglas, a member of the old Supreme Court, who long survived and died within a comparatively recent period at an advanced age, a most honest citizen and excellent lawyer; James F. Joy, who had retired from active practice and become a railroad magnate, but who in his day had enjoyed a wide reputation; Theodore Romeyn, an elegant and courtly gentleman whose clientage was largely from the younger members of the Bar, who set a high value upon his counsel in difficult cases; and Jacob M. Howard, subsequently Senator of the United States, a man of massive intellect, a powerful writer and advocate, the crowning act of whose life was the drafting and carrying through of the first anti-slavery amendment to the Constitution of the United States. These were all men of signal ability and formed a combination of legal talent rare in a Western frontier State just redeemed from the wilderness.

It was, however, with a later generation, with the men of the sixties and seventies, that as practitioner, Judge of this Court, and subsequently of the Federal Court, I was brought most closely into contact, and of whom the spirit of reminiscence prompts me most actively to speak. I have already alluded to the fact that the Wayne Circuit Court was then held in a humble brick building on the corner of Congress and Griswold Streets, through whose modest portals I entered the Bar of Michigan in the summer of 1860. The headquarters, as they may be termed, of the Bar and its library, were the familiar Rotunda Building, a poorly constructed brick block on the corner of Griswold and Larned Streets, which seemed to have been specially built for the conflagration of lawyers and other wicked denizens, but which the providence of God spared from the flames until it was torn down for the erection of the present Newberry Building. The occupation of the new postoffice in the spring of 1867 had converted Griswold Street from a quiet residence neighborhood to become the Wall Street of Detroit, though several of the old houses were still standing.

Of the Bar of that day, and I looked upon it then with a respect almost amounting to reverence, a respect which time has not worn away or diminished, it is no disparagement to many other excellent lawyers and eminent men to say that, in the varied accomplishments which go to make up the sum total of a legal career, George V. N. Lothrop was *facile princeps*. He was then a comparatively young man, but had already been conceded the leadership of the Bar, a position to which he held an indubitable claim for over twenty years. He may have been surpassed by Walker and Romeyn in his knowledge of

adjudged cases, by Holbrook in the technicalities of practice, by his own son in the law of patents, by Chipman in the peculiar ways of managing men which contribute so much to the success of a criminal lawyer, but unless special acquaintance with a subject were required, Lothrop was the man to whom the younger members of the Bar and the public generally were wont to resort to take the helm in a difficult case. To a comprehensive knowledge of the law he added a graceful address, dignified manners and, with oratorical gifts of the highest order, an apparently reserved power which was rarely, if ever, called into action. During the last twelve years I have been brought into contact with most of the leading lawyers from the great commercial cities, and the better I have known them, the more I have regretted the course pursued by Mr. Lothrop in declining to follow his cases to the highest court, where his talents would have been instantly recognized and secured him a place among the great lawyers of the nation. Perhaps the triumph would have been a barren one, but the position would have been secure.

The limits of this address permit of little more than a casual reference to the principal lawyers of that period. Who that ever saw him can forget the handsome face and engaging manners of William Gray, who was a living example of the charm of the Irish brogue in the mouth of a refined gentleman? His only equal in this particular, so far as my personal acquaintance extends, was the late Lord Morris, formerly Chief Justice of Ireland, whose Tory principles and diligent cultivation of his Hibernian accent is said to have had much to do with his promotion to the House of Lords. There, too, was Aaron B. Maynard, a most popular and successful advocate, who had the happy faculty of getting in touch with the jury by homely language and singularly apt but often sadly misapplied quotations from the Scriptures, and Levi Bishop, a unique and eccentric figure, who was by turns a skillful shoemaker, a highly respectable lawyer, an indifferent poet, and a somewhat acrid politician. His title to fame rests principally upon a fanciful description in rhyme of a mythical Indian village, supposed to have stood upon the site of Detroit, known as Teuscha Grondie. But perhaps he is best known to his friends by a poem entitled "My Thoughts on Meeting a Bear," a title which provoked a witty rejoinder by John Chipman, that, having learned Bishop's thoughts on meeting the bear, he believed the public would be interested in knowing what the bear's thoughts were on meeting Bishop. There, too, was Dewitt C. Holbrook, a most resourceful and accomplished practitioner, who tried more cases in the Wayne Circuit than any man of his day; Bethune Duffield, who practiced law for

revenue, and wrote poetry from sheer love of a literary life to which he was conspicuously adapted; John Logan Chipman, subsequently member of Congress and king of the criminal Bar, a man of great natural ability and of a rugged mental and physical character, of whom it may be said that he ought to have been a much greater man than he actually was; John S. Newberry, one of the most successful admiralty lawyers of the country, who left the profession to become one of its most successful manufacturers; Sylvester Larned, the most persuasive criminal lawyer of his time, an adept in the art of winning the sympathies of a jury by the exhibition of great emotion, and whose very voice, as remarked by a reporter of that day, contained an ocean of unshed tears, tears which as a last resource he kept in reserve for the guiltiest of his clients, and which rarely failed to secure an acquittal, a man of such pleasing address and captivating manners that the stoniest hearted judge could not escape the magnetism of his influence.

In this slight sketch of the leading members of the Detroit Bar of that decade, I have made no mention of those still living and who were then in the bud of promise, rather than the flower of fulfillment. The oldest of them are my contemporaries. To speak of them all would unduly tax your patience. To speak of some would lay me open to invidious distinctions. A later generation were active practitioners in the Federal Courts during the sixteen years in which I sat upon the District Bench. Another generation still has come upon the stage since I was translated to the higher court. If I have not spoken more at length of the Wayne Circuit and its distinctive features, it was because my own practice was principally in the Federal Courts, and my incumbency of the State Bench was too short to enable me to get into touch with the judiciary of other circuits, or even with the Bar of my own court.

In those days, when five dollars was considered a reasonable *per diem* compensation, and summer vacations treated as the exclusive prerogative of the wealthy members of the profession, whose income exceeded the munificent sum of two thousand dollars, the practice of the law was not as profitable as now, but lawyers as members of the community never stood higher in the public confidence and respect. Prior to the Civil War great fortunes, as we now understand the term, were unknown outside of New York and were there so few as to be counted upon the fingers. But the reputation of the Bar rested then, as it still does, less upon its emoluments than upon its character and ability. In these particulars the Detroit Bar was the peer of any, at least, in the Western States.

We are met here to-day to solemnly dedicate these halls to the administration of justice. Aside from the duties that man owes to his Creator, there are none more important than his relations to his fellow man. It is the object of the law to adjust these relations upon the basis of natural justice, and upon the theory that every one is entitled to the pursuit of happiness in such manner as his interest or inclinations dictate, though subject to certain limitations demanded by the public good. There is no higher human obligation than the establishment and maintenance of these rights. We are all of us too apt to forget, in the prosecution of some petty action, that we are doing something more than securing a debt or personal redress, and are really turning a wheel in the great mechanism of justice, which the State has provided for the security of private rights. Indeed, in every action, however trivial, we are doing something more than enforcing or defending a private right. We are inculcating respect for the law, and contributing something to the stability of the government, since no government can be stable unless the citizen be conscious of the fact that, in case of injury to person or property, he has a safe harbor of refuge in the purity of the courts. Indeed, it is one of the most valuable features of the jury system that it instils in the citizen respect for the law, a respect which inevitably arises whenever he becomes conscious of the fact that he has a personal responsibility in its administration. As once remarked to me by a disaffected Englishman: "Our petty magistrates are often unjust to the poor. A man may beat his wife black and blue and get off with a fine of ten shillings, but if he kills a pheasant he goes to jail for a month. But in our higher courts justice is administered with exact impartiality. Peer and peasant stand here upon the same footing." Wealth and poverty, pride and humility are equal sharers in the blessings of a free and independent judiciary of learned and high minded men. It is certainly a splendid tribute to the American judiciary that, in spite of small salaries, short tenures of office, and insecurity of the future, charges of favoritism and venality are so rare as to be really a negligible factor in one's estimate of probabilities. The appointment or election of judges for fixed terms, and a strong *esprit de corps*, common to Anglo-Saxon judges, secure them not only from the personal approach of litigants, but from that executive interference which has been, and perhaps still is, the bane of continental courts, and renders it almost impossible for a private citizen to secure justice in actions in which the government is interested. It is too much to say that the Bench is always and wholly free from personal prejudices or predilections. Constituted as human nature is, it is impossible to

emancipate it altogether from influences which have, perhaps, been acting upon us from childhood, perhaps even inherited from one or the other of our ancestors. It would be folly to assert that judges are in this particular superior to other men, or to pretend that they can extricate themselves from intellectual entanglements which may be the product of years of conscientious thought. For an unconscious bias of this kind a judge is not morally responsible if he makes an honest effort to free himself from it. My own belief is it cuts a much smaller figure in judicial opinion than is commonly supposed.

Great as is the obligation which the lawyer owes to his client, more important yet is his duty to the State. Charged as he is with the administration of the law, it is inevitable that the public shall look to him for suggestions as to its amendment. Seeing its defects, realizing its failure to do justice in particular cases, he owes it to himself, to the profession, and to the public to see that these defects are remedied. It is customary to speak lightly, and even scoffingly, of the legal profession, but it is none the less true that we owe to that profession the establishment of those great principles of civil liberty, which are an inheritance of centuries of free government, and are making of the Anglo-Saxon the dominant race of the world. In the thousand years that the English-speaking nations have been ripening into maturity there is scarcely an act of Parliament, of Congress, or of a local Legislature, that touches the framework of the law, which was not drafted by the skill and carried through by the perseverance and energy of the lawyers of their day. The fight has not always been a winning one. Time and time again they have been baffled and driven back by the stubborn resistance of arbitrary power. Even the simple propositions of Magna Charta and the Habeas Corpus act required centuries for their final acceptance; but at each assault upon them the free people of England returned to the conflict with undaunted courage until the victory was finally won, and the principles of these two great instruments incorporated into the English Constitution.

It is related of Sir Edward Coke that when the question was put to the Judges by King James whether, in a case where the King believes his prerogative or interest is concerned and requires the Judges to attend him for their advice, they ought not to stay proceedings until his majesty has consulted them, all the Judges answered "yes," with great alacrity, except Chief Justice Coke, whose reply was that "when the case happens I shall do that which shall be fit for a Judge to do." This simple and sublime answer which, Lord Campbell states in his "Lives of the Chief Justices," abashed the Attorney General,

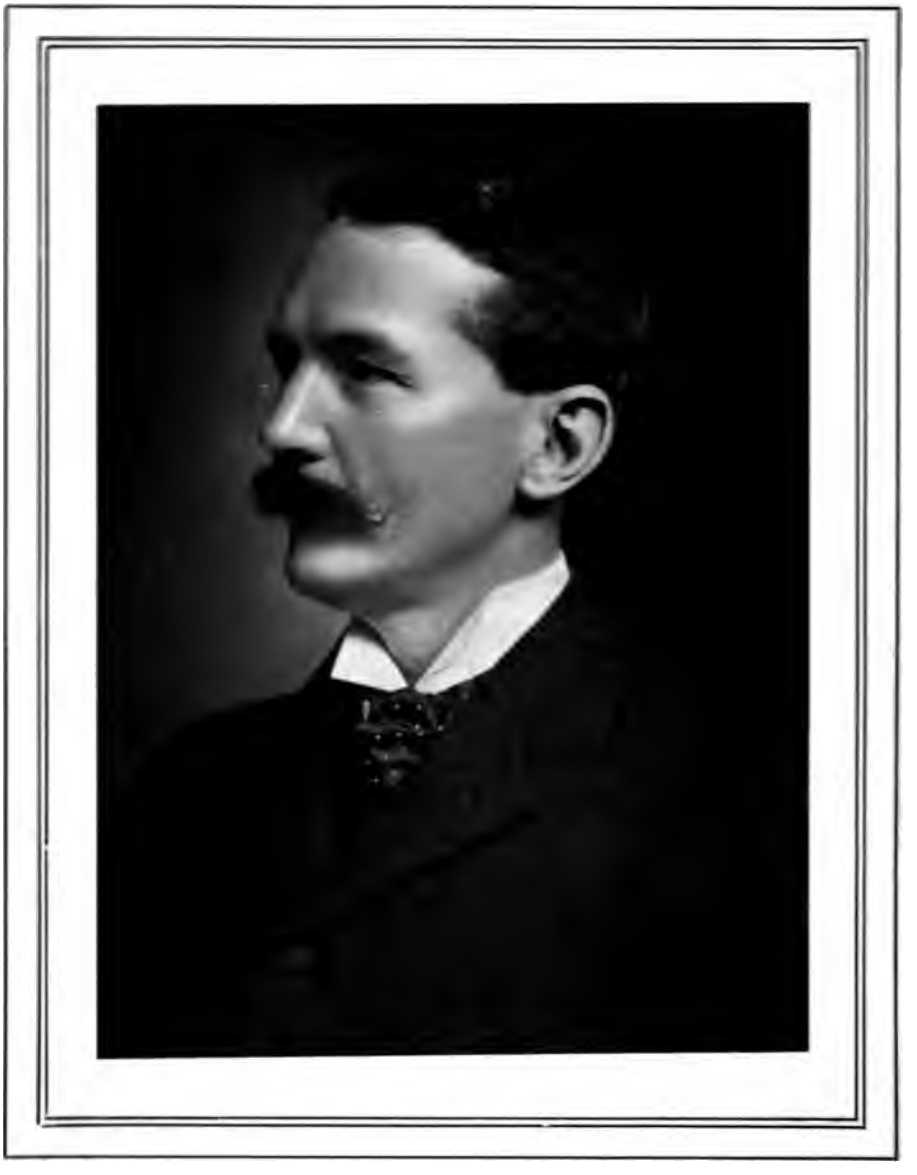
made the recreant Judges ashamed of their servility, and even commanded the respect of the King himself, was a declaration of the independence of the judiciary rare in that age, but one which lies at the very foundation of free government. Coke was a born fighter and often exercised his proclivity to the insult and oppression of those who had incurred his displeasure, but his reply to the King sounded the key note of modern Anglo-Saxon jurisprudence.

While in this country the fundamental principles of free government have never been the subject of dispute, the existence under the Constitution of separate and independent sovereignties has been the occasion of a vast amount of public strife and private litigation. Though it required four years of civil war to settle the supremacy of the Federal Government, and a century of judicial opinion to adjust the proper relations between the Federal and State Courts, few will hesitate to pronounce the result eminently satisfactory. Indeed, the ease and freedom from friction with which this complicated mechanism of sovereignties within a sovereignty does its work, is a splendid tribute to the constructive genius of the lawyers and courts of the last century. So perfectly is the law settled in this particular that cases involving the relations of State and Federal Courts are now of rare occurrence, though questions as to the powers of State Legislatures under the Fourteenth Amendment, and of the power of Congress over outlying Territories bid fair to demand another century for their final adjustment.

But the great questions of the present century promise to be social rather than legal or political, and to require for their solution statesmanship of the highest order. We are all of us conscious that a great change is in progress; that within the past twenty-five years a quiet though complete revolution has taken place in the methods of production and distribution, and that certain principles which for over three hundred years had been accepted as axiomatic are being put to a new test. That forces are at work which may prove too strong for Legislatures and courts is not unlikely; that the new method of non-competition will result in enormous additions to the fortunes of the rich is inevitable; that it will conduce to the injury, if not the ruin, of individual enterprise is extremely probable; but whether it will contribute to the weal or woe of the great mass of people may yet be open to doubt. In this particular the future is wrapped in uncertainty. It is one of the peculiarities of the situation that precedents seem to be of little value. We have all of us had occasion to notice that the operation of political forces is often the converse of our expectations. The most potent argument in favor of universal suffrage lay in the fact that it would destroy the power of

money at elections, and enable the great mass of people to protect themselves. The result has been that the power of wealth in the control of elections has been quadrupled, and that many who once feared that the rights of property might be submerged by an overwhelming vote of a protelariat, are now apprehensive lest the moneyed classes succeed in taking to themselves the entire power of state, and wielding it in their own interests. But in the abounding prosperity of the present the temptation to postpone the solution of questions which may hereafter become acute is irresistible. It is impossible to prescribe a remedy until we are sure that we are afflicted with a disease, and have properly diagnosed it. We can only hope that when the disease is located it may not have progressed beyond the possibility of a cure. One thing is certain, that when the emergency comes, the people will turn instinctively to the Bar for men competent to deal with it. In the crisis of the future, as those of the past, able and patriotic men will rise from the ranks of the legal profession, skilled to pilot the ship of state to a safe harbor of refuge. The spirit of the men who, more than a hundred years ago, rescued her from the shoals and quicksands of the old confederacy and anchored her safe under the new Constitution, though slumbering, is not extinct, and only awaits the coming of another great emergency to waken to a new life.

As this may be the last opportunity I shall have of meeting the Detroit Bar as a body, I desire to-day to register anew my allegiance to it, and to assure you of the pride I have always felt in being an integral part of it. It is here that I have found my most intimate associations and life-long friends, and amid all the glamour of public life at the Capital I recall with infinite pleasure the thirty years spent here as the crowning joy of my life.



HON. JAMES L. BLAIR.

THE BAR AND PUBLIC AFFAIRS.

Address of James L. Blair, of St. Louis, on the Bar in Its Relation to Public Affairs.

To an audience composed so largely of our profession it is as unnecessary, as it would perhaps be tedious, to recount the part which lawyers have taken in public affairs. It would be but a recital of the best known facts in the political evolution of our race, of the epochal events in our past, for history tells of no critical moment when the lawyer, "fired by the spirit of liberty," yet holding fast to reverence for order and the "duty of subordination," has not been in the forefront of action, always "resisting despotism and yet teaching obedience."

It is not my purpose, therefore, to rehearse to you those brilliant and enduring services rendered by those of our calling in the creation and upbuilding of social order and political systems. They are the familiar precedents upon which everyone of us who is true to the traditions of the Bar has sought to found the structure of his own professional life; they constitute the splendid heritage of noble deeds and high thinking, stretching from the earliest time to the consummation of all political philosophy embodied in the maxim, "liberty regulated by law," which, for the first time in human history, has been fully realized under our own constitutional government. I would but call to mind this noble past in order that we may, impressed with that just pride which its contemplation excites, consider the permanent and enlarged obligations which it has imposed upon us both individually and as a body of men who, by the very nature of our calling, are consecrated to the maintenance of the highest ideals.

A great jurist has said that the profession of the law in its broadest meaning is not merely a calling, but a department of government. The justice of this remark must be obvious to every thoughtful mind, not alone because as officers of the Court we are part of the mechanism of its judicial department, but because in our ordinary walk of duty, in the

framing of the laws themselves, in the application of legal principles to affairs, in advocating at once the spirit of progression and conservatism, we execute in a manner peculiar to the nature of our employment, both by inspiration and action, that highest of governmental functions, the maintenance of progress and permanence in society. I am quite aware that this claim involves no small degree of honor, but it rests upon facts indisputable. I need only remind you that the "*corpus juris civilis*," that great intellectual monument of jurisprudence, was the work of lawyers: that the great body of the common law grew up little by little to its commanding eminence under the guiding hands of the men of the law: that that consummate product of learning and prescience, the Constitution of the United States, which, as Gladstone said, "has certainly approved the sagacity of the constructors and the stubborn strength of the fabric," sprang from the brain of jurists and lawyers; one to demonstrate the truth of this claim and it finds further and complete justification in history; one in the administration of the law through the judgments of our great magistrates and the interpretations of our counselors. It is beyond challenge that the Bar collectively and individually "led by Divine Nature and the immortal reason of the law" from the morning of civilization to the present time, have upheld with strenuous, constant devotion the inviolability of human rights and the majesty of justice.

This unique distinction of performing a governmental function without official rank or emolument, yet with all the liberty of action and thought which pertain to the duties of a private calling, cofers upon the lawyer all those positive and specific responsibilities inseparable from such advantages. In one field of his activity as legislator, he must frame the statutory enactment expressive of the will of the sovereign people; in another, as an executive, he is called upon to approve or veto the legislative policy; in still another, as the advocate, his most frequent office is to interpret and expound the written law in the light of precedent and principle, and finally as the jurist it is his function to adjudicate the validity of the enactment; to determine ultimately its meaning, its application, its right to a place amongst the acknowledged principles as a rule of human conduct, sanctioned by the conscience and reason of mankind.

His province includes, therefore, all the three great governmental departments, Legislative, Executive and Judicial, superadding the administrative functions of the law as applied to private rights. It is impossible to conceive of a field of action more honorable, more exalted, or more replete with opportunity.

It is thus that by virtue of the necessities of his vocation the lawyer is at all times and in all places concerned with problems of government. Quite naturally then he has been often chosen for high official station. It is interesting to note that all but three of our Presidents have been lawyers; that of our great Ministers of Finance, five, headed by that imperial intellectuality, Alexander Hamilton, have been members of the Bar; that the list of our Prime Ministers, if we may so designate our Secretaries of State, has been ornamented by such names as Webster, Seward and Olney. These are not merely accidental, but the natural consequences of those habits, training and traditions which made the members of the Bar take the lead in that great debate concerning human liberty which preceded, superinduced, and, if revolutions can be mitigated, tempered and politically, at least, brought to a successful termination our great struggle for national independence.

And it is this *noblesse oblige* that imposes upon us the duty of self-examination as to our professional acts and ethics, lest without this rigorous and frequent review, these high standards may be tarnished by dishonor or discredited by neglect. This is my sole justification for presenting to you to-day some suggestions which arouse in my mind, not fear, but some degree of apprehension lest some such result should come about.

And first let me say that I think the Bar is less free than formerly, much less free than it should be from the taint of commercialism which in these latter days seems to pervade not only all sorts and conditions of men, but almost every vocation. You are all familiar with the saying of Mr. Webster in regard to good lawyers; that "they lived well, worked hard and died poor." It cannot be said that poverty was the choice of such men. It was rather the result, at least in his day, of a distinctive devotion to professional work, the same devotion which affected that great modern scientist who said that he "did not have time to make money." To the credit of our profession it must be said that they have felt the spur of that fine ambition which has made them one of those privileged classes of society whose privilege it is to instruct and lead others, a privilege resting upon no other basis than a demonstrated fitness for leadership, and it is a matter of the highest congratulation that this ambition has been so signally and so frequently realized. But there has crept into the profession the all pervading passion for the acquisition of wealth. The luxuries of life, the power which follows upon the heels of great riches, the social distinctions of a certain character inseparable from these things have seduced many from the nobler, loftier aims

which are the special and most treasured possessions of our brotherhood. It is quite natural and right that the emoluments of the law should increase with the general industrial prosperity, that, in serving the great aggregations of capital peculiar to the modern business world, the lawyer of special skill and learning should receive full reward for his services. The fact that the scale of compensation now prevalent for the higher order of legal work is largely enhanced, is quite consistent with and fully explained by the greater responsibilities involved in work of this character, and also by the great advances in the scale of living, which of necessity must be one of the bases upon which the compensation of the lawyer is fixed; but apart from all these considerations, can we in candor, looking at the Bar of the present day, feel that assured satisfaction which we would all like to feel. that we are not too much affected by the desire to accumulate? That the flesh-pots of Egypt have not seduced us from those finer, higher aspirations which have always been at once the pride and glory of our profession? Are we as a body to-day actuated as little by the desire for gain in our professional labors as in the day when the services of the "law-man" were given without stint or expectation of reward to the Witena-Gemote of our Saxon ancestors, or even in that later day when brethren of the Bar felt that the *honorarium* was the only form in which they could, consistently, with the etiquette of the profession, accept compensation?

Is it not now our duty to look back over the landmarks of our progress, compare our relation of to-day toward that material side of our professional career with the same relation at the period of our highest professional ideals in the past; and is it not possible for us again to emphasize, even in this day of greedy money getting and the mad chase after wealth, the fact that there is at least one profession still holding fast to those ancient and honorable ethical tenets which have shed such lustre upon the names of Erskine, Somers, Hale and that great lawyer, that magistrate of all magistrates, John Marshall?

Again, let me ask if it is not true that there exists in the public mind a belief that the lawyer of to-day does not stand upon the same high ethical ground as did his predecessor of the last generation? Not that the individual holds the opinion that his own particular counsel is less worthy his confidence than was the case a half century ago, for I believe that the relation between counsel and client is as close, as confidential, as highly estimated, as honorably guarded as ever; but there can be no doubt of the general feeling that the "average lawyer," as he is called, is not of the same high order as his professional forbear, in all those matters relating to

conscientious and unselfish service, reasonable charges and lofty ideals. If this is true, is it not because of the fact that we ourselves have not always resented any suggestion, even though spoken in jest, of professional degeneration; that many of us, perhaps, have not maintained in our own living those very standards of which we are so proud? It cannot be gainsaid that it is to some extent true that this virus of commercialism, the too great readiness to subordinate the function of the counsellor to the mere business adviser, the willingness to promote legislation by means of personal influence for business purposes only and not for the common good, the eagerness to participate in speculative investments, the neglect to uphold the dignity and integrity of the Courts, the too great indifference to the selection of Judges have helped to create that sentiment among the general public. Unfortunately this has made the public feel that the isolation we have claimed for our profession from all those more sordid considerations rests upon no substantial basis; that in effect the "average lawyer" differs in no respect from the average business man except in the possession of a certain definite skill in the manipulation of words, in the strategic conduct of a law suit. If such is the case even in ever so small a degree, how can we face the accusing finger of our past and render account of the talents which have been entrusted to us? If this be true in any measure, is it not high time that the money changers be scourged from the temple of justice lest, forgetful of the sacred obligation resting upon us to maintain that temple in all its purity, we fall to that low state wherein we shall be but a hissing and scorn in the eyes of the people?

Now as to our part in the public affairs of to-day. I do not think that our interest as a class in these matters has abated. I believe that there are quite as many lawyers in the public service as ever. It is my observation, however, that official position is no longer sought, or, if sought, not long held by the greatest men at the Bar. It seems to me that the honor of distinction in office has lost much of its attractiveness to us. It is not a sufficient answer that the emoluments of public office are not sufficient, nor is it a convincing argument that the rewards of private practice are so much larger than heretofore that great abilities are tempted to forego the honor of the public service. Whatever the reason, the fact is that the great lawyer in office is now the exception rather than the rule. In the National Congress he has been superseded by the millionaire, whose incentive is personal advancement or party advantage rather than the solution of the great problems of statecraft; and, alas, in our lesser assemblies, too often by the man who is the paid agent of

some special interest requiring either legislative aid or protection from private competition. Moreover, if, as I have suggested, the lawyer is a part of the government, whether or not he enjoys an official title and if, as we all know, the character of his education, training and daily activities are such as to specially fit him for political affairs, how much less is he to be excused if he be one of those who does not actively perform all his political duties. Under present complex business conditions there may be some, but very little, excuse for the man of business who says that he has no time to participate in politics. For the lawyer, there is none. In its broad and proper sense, politics is the public business. The public business concerns the merchant as much as the lawyer, and the neglect of one is no more to be excused than the other, save that the professional obligation upon the lawyer holds him to a higher accountability. Unless he keep himself intelligently informed and actively engaged in the management of that public business, he is as recreant to his profession as he would be to the interests of a particular client.

We cannot conceal from ourselves that the times are fraught with great peril to our body politic. The thing that Thomas Jefferson, the philosopher, feared and foretold has come true; we have ceased to be an exclusively agricultural people. Our rural population has flocked into the cities, and we are confronted with conditions of municipal corruption such as the world has never before witnessed. Public franchises are bartered like merchandise, and boards of aldermen in nearly all of our great cities are filled with public enemies, banded together to trade in the property of the people with the same deliberate calculation as men under the ministry of Walpole, bargained and sold seats in Parliament. In my own City of St. Louis there have been such exposures as well nigh shake our belief in our own institutions. A majority of each house of our municipal assembly formed a combination, bound together by an oath, whereby in blasphemous insolence they called upon the Almighty to sanction their pledge of fidelity in crime. They set a scale of prices upon public utilities, and for years carried on this infamous traffic, paralyzing government, and grinding an oppressed community into the dust of shame and ignominy. But, happily, through the skill and courage of our Circuit Attorney, Joseph W. Folk, a man whose integrity and high professional standards have made him an ornament of our profession, these horrors have been discovered and many of the perpetrators punished. And it is a matter of felicitation to us that in this infamous assembly there were but three lawyers, not one of whom was among the conspirators.

I say that we, as lawyers, cannot shut our eyes to these conditions, nor with fidelity to our profession refuse to aid in their extirpation. Not only as lawyers, but we must again, as we have so often done in the past, show that we are still in the front rank as citizens, ready to follow the example of Samuel J. Tilden in bringing to justice one of the greatest criminals of the age.

One of our faults as a people is our lack of reverence for the law. The spirit which produced the negro riots in New York, the lynching of negroes in the South, the shooting of non-union miners in Pennsylvania, fraudulent practices at elections, the lax execution of the criminal law, is primarily due to that want of reverence. Now, to what must we ascribe this lamentable fact? Perhaps, in some degree, to a latent feeling that exists, that some of our judiciary are not above party considerations, but I do not believe this to be a general or sufficient reason. I believe this profound distrust, and it is profound, rests upon many things. Among these are the widespread corruption in Legislative bodies, partisan excesses, but more than all upon that most vicious and increasing evil, class legislation; and so long as our Legislatures, National and State, lend themselves to that uneconomic partisan un-American practice, so long as the law-making machinery of the Government is prostituted to private ends, whether it be in the protection of monopolies or the promotion of party interests, so long will that distrust continue. It is here that the lawyer may exert his greatest influence. To his instructed mind nothing could be clearer than that such deviations from the fundamental, eternal principle of equality under the law, the very spirit, the genius of our Government, must lead to utter disbelief on the part of the people in the Government itself, for, as Victor Hugo has well said: "In the depth of the conscience of every citizen, of the humblest as well as the highest, there is a sentiment sublime, sacred, indestructible, incorruptible, eternal—the right. This sentiment, which is the very element of reason in man, the granite of the human conscience, this right is the rock on which shall split and go to pieces the iniquities, the hypocrisies, the bad laws and bad governments of the world. This right is concealed, invisible, lost to view in the soul's profoundest deep, but eternally present and abiding. You might sooner tear up the eternal rock from the bottom of the sea than the right from the hearts of the people."

It is the supreme function of the lawyer, recognizing the existence of this profound consciousness of right, to save the people from the mischiefs which must inevitably flow from these evils. We cannot expect them to respect the law unless we ourselves cherish that sentiment and emphasize it by our

lives and conduct. We cannot assume or affect this sentiment in the case of laws, which we believe to be corrupt or unwise. How greatly then does it behoove us to see to it that no such laws are put upon our statute books? It is a solemn responsibility. Can we say that we have at all times met and discharged it without fear and without reproach?

There is another matter in which we, as lawyers, are largely concerned, because it has reference to the standing of the Bar in the estimation of the people. We may be assured of our own integrity of purpose, but it is our duty to see, nevertheless, that the public clearly understand our office, that they may know that the ethics of the Bar are not different from those of the people themselves. A strange popular misconception exists as to the duty of the lawyer in reference to defending those accused of crime and in civil cases, in maintaining a cause which appears to be wanting in merit. To us of the Bar our duty in such matters is clear. It is our cardinal rule that no lawyer should advocate any cause wherein the principle for which he contends does not command the approval of his own conscience. The lawyer will meet no difficulty in shaping his course under all circumstances as they arise, if he bears clearly in mind always that, should the question be upon that border line where his course is difficult to determine with absolute certainty, his first duty is to his client; and such misconstruction as may be placed upon his conduct by those not versed in the facts, he must bear with equanimity, perhaps in silence, if the character of the business so requires. We know, also, that in criminal causes it is the duty of the lawyer to defend an accused, even though he may believe his client to be guilty.

Nevertheless, the layman, though willing to concede that the accused is presumed to be innocent, and that an orderly trial according to the rules of law is his inalienable right, and that no such trial can be had without the aid of counsel, still regards with severe disapproval the lawyer who recognizes and performs this duty. It is undoubtedly true that the misapprehension of this subject tends to discredit at least some members of the Bar, and, in a measure, to affect the judgment of the people as to the ethics of the entire profession. As it is our privilege to seek vindication, so it is our duty to impress upon the public the importance, indeed, the necessity of such duties, lest one misconception lead to another, and thus affect the entire judgment of the people with reference to our professional standards. To do this we have but to point out that it is by these means only that the truth can be established and justice made sure.

Who but admires the heroism of Erskine, contending, in the face of bitter denunciation by an angry people, for the

right of free speech in his great defense of Thomas Paine? How great honor is due to the courage of Adams and Quincy for throwing around the British soldiers in Boston the protecting mantle of the law! What right thinking man can withhold approval of the unselfish devotion of Phillips defending to the last the confessed murderer Courvoisier? And, in the serenely impartial, orderly conduct of the trial of that arch traitor, Aaron Burr, was not the very perfection of justice realized by the great Marshall?

Again, as organization is in the present day the only effective means of wielding influence, we cannot lay too much stress upon the importance of the Associations of the Bar. Conference, the exchange of knowledge, the harmonizing of systems and the perfecting of the law are the chief, but not all of their functions. It is in the co-operative effort of the Bar, made effective by these organizations, that there lies its largest power to prevent evil legislation and to promote that which is well considered and wise. To purge from its membership the unworthy, to punish those who have brought reproach or disgrace upon themselves, and thus, to some extent upon their profession, to jealously guard the bench from invasion by ignorance, partisanship and dishonesty, these also are among its gravest functions. It is only by an independent, fearless and able judiciary that the supremacy of justice can be maintained. These associations can, and should dictate and sustain such a judiciary. Their great powers have generally never been invoked or else have fallen into disuse. The Bar Association of my own city has taken no proceeding for disbarment for more than twenty years. On the other hand, the New York City Association has, in recent years, furnished splendid example of the efficacy and extent of those powers.

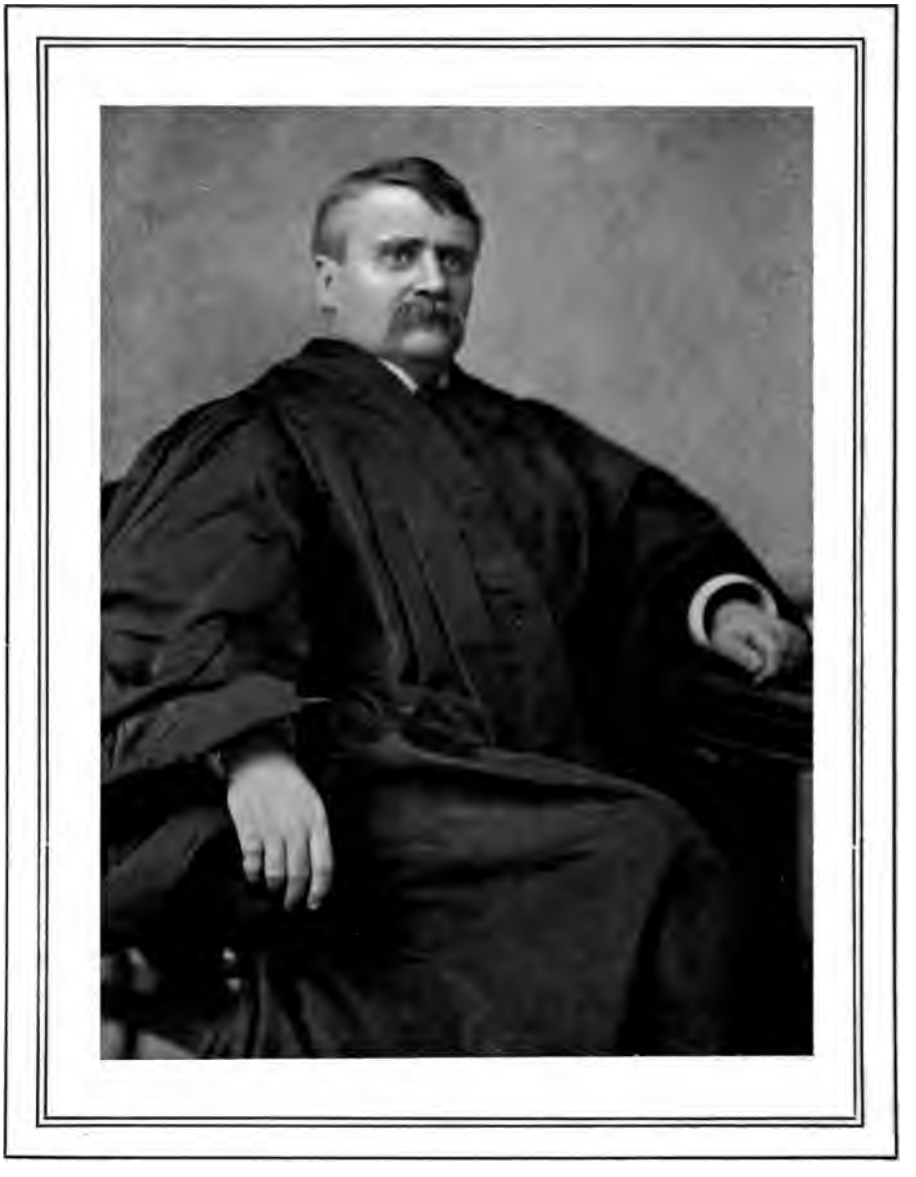
Individual effort alone will not avail. It is an age of organization and co-operation; in general, we of the Bar, are far less interested, far less active in the support of our association work than are the members of trades unions, although herein lies the source of our greatest influence for good.

It is a good omen, gentlemen of the Detroit Bar, that you celebrate to-day the induction of justice into her New Home, with simple ceremonial. She needs no pomp nor splendor of housing or attire. Simplicity alone befits her towering greatness and commanding dignity, and in this noble pile, which you have provided for her service, you have fitly symbolized the image of her as she sits enshrined in every human heart, in beauty, symmetry, strength, stability; emblematic of the truth that of all the earthly concerns of mortal man, she is the greatest.

There is still another duty we owe the public, and that is to make that time-worn saying, "The law's delay," a thing of

no meaning. I am fully sensible, of course, of the importance of deliberate action. No question is ever settled until it is settled right, and since legal questions involve the exercise of the highest intellectual powers, both in the collation of facts and the application of the law, conclusions hastily reached are apt to illustrate that other adage, "The more haste the less speed." But I am not prepared to deny that this average lawyer, of whom we have spoken, is above the charge that he might work quite as well and much more quickly; and I am quite prepared to assert that the average judge could do his work much more rapidly and quite as well. It is a fact of common knowledge, that the delays in some of our Courts are equivalent to a denial of justice. And that they are the direct cause of many a surrender of rights in cases of extreme urgency, where a claimant is driven to take far less than his due rather than confront the often interminable delays of litigation. This is a matter largely within the control of the Bar, and even more of the Bench. And it is a paramount duty to the public on the part of both Bench and Bar that causes shall be seasonably tried and promptly determined.

The greatest epoch, gentlemen, in our social evolution was our transition from status to contract. The sanctity of contractual relations, which have become the very essence and spirit of our social compact, the passage from the old to the new order could never have occurred but for the spirit of law, instinctive in the Anglo-Saxon race. The ideal lawyer should represent the incarnation of that spirit. He should stand in the eyes of the people, not as the high priest of a mystery, not as the base tool of wealth or power, not as the manipulator of phrases, who mistakes words for things and in craft or ignorance adumbrates the truth, but as the man of thought, of intellectual as well as moral honesty, as the conserver of just precedent, the advocate of wise progress, the unsleeping pilot to warn the people of the hidden rocks of prejudice and error; the watchman from the tower to discern afar off the enemies of our institutions; as the apostle of human liberty, the strenuous champion of human rights. He should, by his life and conduct, negative the thoughtless charge, that he is a mere craftsman of words. Let him deal with great principle, great thoughts, let his first concern be not merely to gain victories, which are too often "triumphs which make the judicious grieve," but the elucidation of the truth, the vindication of the eternal principle of justice, upon which rest the law of the land and the future safety and happiness of the race.



JUDGE HORACE H. LURTON.

THE FEDERAL AND STATE JUDICIARY.

Address by Judge Horace H. Lurton, of Nashville, on the Relation of the Federal and State Judiciary to Each Other.

In the very cordial invitation extended to me by the distinguished President of your Bar Association to participate in the observance of this occasion it was urged that I should make a short address upon the relation of the Federal and State Judiciary to each other. As a reason for my taking this particular subject it was suggested by him that I had had the advantage of a considerable service under both systems. Whatever else may come from such a fact I am sure that it has deeply confirmed the view that in the administration of two different systems of judicature, exercising jurisdiction within the same territory but under different sovereignties, there are very many occasions demanding the exercise of the utmost comity of each Court for the other.

From 1776 to 1789, a period of thirteen years after our independence was declared, there was no system of United States Courts and no United States Judiciary. The Union under the Articles of Confederation possessed no judicial powers, and the tribunals of the States were relied upon for the enforcement of the laws of the Union.

All human experiences concur in teaching that no government can be effective which has no judicial power, or which having such power is obliged to rely upon the tribunals of another sovereignty for the interpretation of its powers and the application of its laws. Weak as was the Union under the old articles, in consequence of the want of an executive head, of the power of taxation, and of the power to regulate commerce with foreign nations and between the States, its most marked weakness was in this dependence upon State tribunals for the interpretation and administration of its laws. Nothing but the stress of the war for independence held the States together under the ineffective government of the old Constitution, and when that pressure was removed the government fell into great contempt, and threatened utter collapse for want of vitality enough to preserve even the appear-

ance of authority. There was, however, a widespread feeling that our safety and national existence depended upon our Union and that an efficient and energetic central government was impossible unless wider powers should be granted by the States. This sentiment in favor of Union, so far as we can now judge, was well nigh unanimous, though there were wide differences of opinion as to the extent of the powers which were necessary to enable the government of the Union to energetically exercise those functions necessary to the general safety and common welfare.

This sentiment led to the assembling of a convention of delegates representing twelve of the States of the then Union for the purpose of proposing amendments to the Articles of Confederation. Rhode Island did not participate in this convention and can of all the original States claim no credit for any part in the forming of our Constitution, and both Rhode Island and North Carolina were left out of the new Union by their failure to adopt and ratify the Constitution until after it had, by its own terms, become effective between the other eleven States who had adopted and ratified it, each State acting for itself. But after the new government had been fully organized by the election and inauguration of its first President and Congress those two recalcitrant States adopted the Constitution and were admitted again into Union, and the laws theretofore passed were extended to them.

A Constitutional compact between States greatly varying in population and wealth and having widely divergent interests was necessarily the result of many compromises of opinion and interest. When Washington transmitted, as President of the Convention, a draft of the instrument agreed upon he called attention to the difficulties which had been surmounted only by mutual concessions. That incomparable statesman said that the Constitution proposed "was the result of a spirit of amity and of mutual deference and concession which the peculiarities of our political situation rendered indispensable." With reference to the sacrifices of power made by the States and essential to secure the common welfare he added: "It is obviously impracticable in the federal government of these States to secure all the rights of independent sovereignty to each and yet provide for the interest and safety of all. Individuals entering into society must give up a share of liberty to preserve the rest. The magnitude of the sacrifice must depend as well on situation and circumstance, as on the object to be obtained. It is at all times difficult to draw with precision the line between those rights which must be surrendered and those which may be reserved; and on the present occasion this difficulty was increased by a difference among the several States as to their situation, extent, habits and particular interests."

There was a wide and earnest opposition to the adoption of the Constitution and in most of the States its ratification was secured only by very narrow majorities. The opposition came mainly from those leaders of opinion most deeply saturated with the advanced popular republican philosophy, beginning then to find expression among the oppressed classes of Europe. It was believed by the opponents of the Constitution that that government was best which governed least, and that individual liberty had and would find its surest protection in the State governments; that the powers conferred upon the Union were unnecessary to the ends and purposes for which the Union was established, and were so sweeping as to endanger the existence of the States and thus destroy the best security for personal liberty and popular government. This division of opinion continued after its adoption. "We were," said John Marshall in his life of Washington, "divided into two great political parties, the one of which contemplated America as a Nation, and labored incessantly to invest the Federal head with powers competent to the preservation of the Union. The other attached itself to the State government, regarded all the powers of Congress with jealousy, and assented reluctantly to measures which would enable the head to act in any respect independently of the members."

One of the differences of opinion which divided our fathers was as to the wisdom or necessity for Federal tribunals. Under the articles of Confederation the State tribunals had done the Federal business and it was urged that the creation of a Federal system of Courts would create jealousies and opposition in the State tribunals with whose jurisdiction there would be necessarily much interference. The reply to this was very obvious, and was most effectively made both in the Constitutional Convention and before the people. It was in substance that all experience had proved that Federal tribunals were necessary to render the authority of the Congress effectual, and that the varying scope of the powers of the two systems of government would often place the general and local policy at variance. On this latter account so radical a friend of popular government as John Randolph urged that the Courts of the States should not be intrusted with the administration of the national laws. By a great majority of delegate votes a considerable but definite judicial power was conferred upon the Union and a Federal judiciary provided for.

Now the States did not intend to strip themselves of all judicial power, and you will see that the judicial powers thus delegated to the United States are carefully enumerated, and when we come to scan them it cannot escape notice that the great mass of controversies which enter deepest into our social life are wholly outside the scope of the judicial powers granted

to the United States. Thus the rights, duties and privileges of citizenship (certain prohibited discriminations aside) are enforced through the reserved judicial power of the States. The controverses which arise out of our manifold domestic relations, or in respect to the descent and distribution of our estates, or our contracts, and all of that great mass of regulations for the protection of life, health, liberty and property, depend upon the due administration of State law by State Courts.

The judicial powers vested in the United States were carefully defined. These limited powers extend to all suits arising under the Constitution, or any law or treaty made in pursuance thereof; all cases of admiralty or maritime jurisdiction; all suits to which the United States shall be a party; to controversies between States, or between a State and citizens of another State; to controversies between citizens of different States; and to some other controversies of no great importance. The Constitution also provided that it, and the laws and treaties made in pursuance thereof, should be the supreme law of the land, and that "the Judges in each State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding."

The line of demarcation between the judicial power granted and that reserved by the States would seem to be plainly marked. But Congress, though it might have done so, did not when it came to create courts and regulate their jurisdiction make the jurisdiction of the Courts of the United States exclusive in respect to many controversies to which the judicial power of the United States is declared to extend by the Constitution. Thus from the original Judiciary Act of 1789 down to the present, instead of giving to Courts of the United States exclusive jurisdiction in all suits arising under the Constitution and the laws of Congress and treaties made in pursuance thereof, Congress has made their jurisdiction concurrent with the State Courts. So suits between citizens of different States may not only be carried on in State Courts, but cannot be brought in or removed to a United States Court unless the amount involved exceeds the sum of $2,000. Thus Congress has not chosen to give to the Federal Courts near so extensive a jurisdiction as it might do if it saw fit to confer the entire judicial power of the United States upon the Courts of the United States. I do not complain of Congress about this. I think the Congress is right. In respect of controversies arising under the Constitution or laws of the United States there is a remedy if the State Court denies to the litigant any right, title, or interest arising under the Constitution or laws of the Union, and set up or claim by a writ of error from the Supreme Court of the United States to the highest Court of the State.

There have been occasional clashes of jurisdiction between the Federal and State systems of Courts arising out of controversies of which the jurisdiction is concurrent. The general disposition of the Judges of both classes of Courts has been to act cautiously in all such cases and with the utmost respect for each other, following the well-settled rule which leaves the settlement of all such cases to that Court which first acquired jurisdiction. The Courts of the Union and the Courts of the States have alike from an early day assumed jurisdiction when two laws relating to the same subject have conflicted with each other to decide which of the two was the paramount law, and to apply that law to the settlement of the case. Thus, if the Constitution of a State forbid a law of a certain kind, and the Legislature in defiance of this Constitutional restriction should pass the forbidden law, the State Courts when called upon to enforce the law would find themselves confronted with the question as to whether they would enforce the organic law of the Constitution, or the Legislative mandate which violated that organic law.

If the Constitution of the United States and the laws and treaties made in pursuance thereof are in fact the supreme law of the land, as is declared by the Constitution, any law passed by Congress, and any laws passed by any State in violation of that Constitution, must be ineffective as law, and the Courts of the United States from an early day have not hesitated, when called upon to give effect to such law of Congress or of any State, to say that the law being repugnant to the Supreme law was no law at all, but a mere nullity. The exercise of this power of nullifying State laws has been the occasion of much resentment, particularly in the early decades of our history, and the Federal Courts have been sharply criticized for the assertion of the jurisdiction and in particular cases for alleged mistakes in the application of the Constitution. Frequently very nice questions of interpretation have arisen. A law was valid under one construction of the Constitution, while under another quite plausible interpretation it was void. If the law was one of a political character, a law which one of the great parties had proposed and carried over criticism as to the power of Congress in the matter, the validity or invalidity of the law often turned upon whether a very rigid or a very liberal interpretation should be given to the Constitutional provision supposed to confer power to pass the law.

But still higher problems were often involved in controversies which brought into question the scope of the powers granted to the Federal Government. The Constitution was the work of human intelligencies. The great powers granted were conferred in broad terms, and could not but include some

words and phrases of ambiguous meaning. The problem of the reconciliation of the Supremacy of the Nation, in respect of the great power delegated to it, with the Sovereignty of the States, in respect to those powers of government which had been reserved, and which most nearly touch the every-day life of the people, and most concern their welfare and happiness, had to be worked out. The Government thus instituted was most complex and involved a divided allegiance. The line of demarcation between the powers delegated and those reserved was not always very distinguishable. Step by step the dark places had to be illuminated, and the debatable questions cleared up. To the Courts of the Union, as the interpreters and administrators of that Constitution as the Supreme law of the land, was committed the final decision of all such controversies, and the final marking of the line between the powers of the Nation and those of the States. The function thus exercised was delicate and yet vital to the endurance and supremacy of the Union. Its fearless discharge has kept the Federal Courts constantly upon the firing line, and has resulted at times in much intemperate criticism.

One of the most flagrant cases of conflict between the Federal and State systems had its origin in the very firm antagonism to slavery, which manifested itself shortly before our Civil War. A prisoner convicted by the Federal Court for the District of Wisconsin for a violation of the provisions of the fugitive slave law was taken by a writ of habeas corpus, issued by the Supreme Court of Wisconsin, from the custody of a United States Marshal, and discharged upon an opinion by that Court, holding the fugitive slave law void, and directing its clerk to recognize no writ of error from the Supreme Court of the United States. When this judgment was reversed by the unanimous judgment of all the Justices of the Supreme Court of the United States and the sentence executed, the Legislature of Wisconsin passed a resolution charging the Supreme Court with usurpation and declaring that the remedy was open defiance.

Neither have our brethren of the State Judiciary escaped the discharge of a like duty in respect of the interpretation and enforcement of their respective State Constitutions. Indeed, this function of declaring a Legislative enactment void, which conflicted with the organic legislation of a State Constitution, was first assumed by State Courts, and there were many precedents in State decisions for the opinion of the Supreme Court of the United States in Marbury vs. Madison. Neither have they escaped the hot shot of legislative and popular criticism for daring to declare void the enactments of State Legislatures. During the evolution of the established Constitutional principle concerning the paramountcy of a Constitution over an

ordinary act of legislation, the State Judiciary bore the brunt of the battle. In Rhode Island and in Ohio the Judges of the Supreme Court were impeached, though a conviction was not secured, for daring to declare a law void for repugnancy to the Constitution.

To this purely American principle of Constitutional law, we owe the whole body of that majestic law known as the "Law of Constitutional Limitations," of which your own great and lamented Judge Cooley was the most distinguished expounder who has yet arisen in this country. But I must even go farther and repeat what I have said when touching upon the same subject in former addresses, that to this assumption by the Courts, State and National, of the power to compel obedience to the Constitution as the highest and supreme expression of the popular will by declaring void every act, either of the Legislative or Executive departments of government, we owe the perpetuity and vitality of free, representative, limited, Constitutional government.

I have referred to the necessity for the exercise of comity between the Courts of the United States and those of the State. This arises from the fact that in respect to quite extensive classes of litigations their jurisdiction is concurrent. These Courts, as has been many tmes decided, are foreign as to each other. They are Courts created by wholly different sovereignties, and neither holds any superiority over the other except in the rare case of a writ of error from the Supreme Court of the United States to the Supreme Court of a State to review its decision in respect only to a claim set up on the record to some right, title, claim, or interest arising under and dependent upon the Constitution, or some law, or treaty made in pursuance thereof, when such right has been denied. With the single exception I have named, an exception due to the fact that Congress has never made the jurisdiction of its Courts exclusive in controversies arising under the Federal Constitution or laws, the two systems of courts are absolutely independent of each other, and the rules of jurisprudence and comity applicable between courts of different countries apply to them. It is the highest duty of both Courts to so administer the rules of procedure as shall best enable them to co-operate as two systems co-existing within the same territory, and alike submitting to the supreme authority of the Constitution of the United States.

In Taylor vs. Carryl, 20 Howard, 593, Mr. Justice Campbell, after stating strongly the duty of harmonious co-operation, said: "The decisions of this Court that declare such an aim, and that embody the principles and modes of administration to accomplish it, have gone from the Court with authority, and have returned to it, bringing the vigor and strength that is always imparted to magistrates of whatever class by the approbation and confidence of those submitted to their government."

The general principle which should govern the procedures of Courts with concurrent but independent jurisdiction was thus stated by the United States Circuit Court of Appeals for this Circuit: "It is a rule of almost universal application that, between Courts of the same sovereignty and concurrent jurisdiction, the court which first acquires jurisdiction of the controversy or of the res should be suffered by every other Court to decide every question within the sphere of the pending cause, and to continue in the possession of the subject matter of the controversy until every question before it shall be decided and the res discharged from its control. This rule has its foundation, perhaps, in comity; but the fruits of its recognition have been so beneficial, when applied to Courts of concurrent jurisdiction created by different sovereignties, as to justify the conclusion that it is not only a rule of comity, but one of necessity. The cases are numerous which recognize its binding force and illustrate its wide application."

Problems and difficulties always have and always will beset the path of every self-governing people. From the beginning, the question as to how to reconcile individual liberty with the restraints of law essential to the common safety and general welfare has demanded solution. To these old and never answered questions, we have had added the further problem of how to reconcile the sovereignty of the Nation with the sovereignty of the State. It was not to be expected that the complex machinery devised by our fathers to this end should work with absolute smoothness when first set in motion. The natural capacity of the American people for self-government, co-operating with the shaping which comes with the slow process of time and the lesson of experience, has largely solved the difficulties which from time to time have presented themselves. The complex system of Federal and State governments, and Federal and State judicial systems exercising their powers over the same people and within the same territory has been made to work in wonderful harmony, and the genius of our people for self-government is day by day splendidly vindicating itself.

I have referred briefly to the great Constitutional functions discharged by both judicial systems and the semi-governmental questions involved in the exercise of the jurisdiction of both tribunals as defender and upholder of Constitutional limitations. There is a wider jurisdiction exercised by both State and Federal Courts which concerns only the administration of justice in the innumerable controversies which arise continually between man and man. In the discharge of this high and sacred duty, the Judges of the Federal and State Courts are priests ministering at a common altar. The cleanness and uprightness with which we discharge this great and solemn

duty of judgment is of the utmost concern to the welfare of all our people and to the perpetuity of free institutions.

Judicial probity is the absolute essential to the very existence of an ordered social life and the keystone of the arch of our common safety. When public confidence in the integrity of the Judge of the land shall be shattered, the doom of a government by law is sounded. I cannot fail to testify to the general confidence and affection of the people submitted to their jurisdiction for the magistracy of the States.

When I witness daily the integrity and devotion to duty with which my brethren of the State Courts administer the State justice and the general loyalty with which they are upheld, notwithstanding their short elective terms, my faith in the capacity of the people is strengthened and my confidence in the endurance of popular government invigorated. The spectacle of this public regard which is exhibited for them has, at moments, occasioned a sense of isolation and envy that the Judges of the Federal Courts could not, by reason of the character of their duties, draw nearer to the people and share more in their confidence and affection. A more secure tenure and slightly better compensation are not a full compensation for the greater esteem in which the State Judges are held, and the only reflection which reconciles us to the situation is in the greater opportunities which the service of the Great Republic affords for the discharge of great duties; and of these none are so full of reward as that which comes from an earnest effort to present the Courts of the Union as the Courts of the people in as full a sense as those of the State with which they are more familiar.

In conclusion let me say that the true relation of the Federal and State Judiciary to each other is that of brethren co-operating in the administration of justice and priests serving around a common altar.

The Dedicatory Prayer.

The afternoon exercises closed with the following dedicatory prayer, by Rev. George Elliott, D. D., of the Central Methodist Church, Detroit:

Almighty and Most Merciful God. Thou most worthy Judge Eternal, before the majesty of Thy justice, we obediently bow our souls and bodies, trusting in Thine infinite mercy.

Accept, O gracious Lord, this work of our hands which we now present and dedicate to Thee. As Thou hast inspired its designers and craftsmen to build it in strength and adorn it

with beauty, so we pray Thou wilt fill this temple of human law with the spirit of Thy divine justice and equity.

Give to all Thy judges and magistrates, who here shall sit in judgment, ripe learning in earthly justice and a rich endowment of Thy hearing and eternal justice. May they give sentence in righteousness. Make them tender, serious and merciful in condemnation, and may they avoid all jesting with men in misery. Let them not judge by the hearing of the ear or the seeing of the eyes, but with discernment of spirit which Thou shalt give. May they not regard the person of the mighty nor be afraid of his terror, nor despise the person of the poor, and reject his petition. Help to hold the scales of truth and right with steady hand and let not passion nor prejudice disturb their just and equal balance.

Give to all advocates who shall plead in these tabernacles the perfect sympathy of our Great Advocate and Intercessor, Jesus Christ. May their tongues never confute their consciences, nor their trained skill become purposely a barrier to right and the shield of wrong. Save them from sordid aims and the meanness of selfish greed. Give them sensitive honor and integrity to their clients, subject to a loyalty to the sovereignty of law to which they are sworn servants.

Grant, O God, that in these halls the majesty of law may not be the patrimony of the proud, but the heritage of the humble; not the two-edged sword of oppression and wrong, but the staff of honesty and the shield of innocence.

Oh, Eternal God, clouds and darkness are round about Thee, but justice and judgment are the habitation of Thy throne. Make this house Thy dwelling place, and all the officers who shall serve here ministering priests at the altar of justice, wearing the spotless robes of purity and offering the sacrifices of righteous deeds.

And not this temple alone, but ourselves, our souls and bodies, we surrender for Thy dwelling, praying that, by Thy grace, we may all do justice, love mercy and walk humbly before our God. So may we receive at last the just reward of our integrity before the Judge of judges at the great assize of all the world. Through Jesus Christ our Lord. Amen.

THE EVENING EXERCISES.

Elaborate Decorations and a Notable Reception to Members of the Bar.

The evening of dedication day was devoted to a reception which was a very brilliant affair. For decoration all the available palms in the City were obtained, and American Beauty roses were used in the greatest profusion. Great quantities of Chrysanthemums were added to the decorations, and the Probate Court Room, in which the exercises were held, and the corridors were abundantly draped with American flags. A selected orchestra of about 30 pieces, under direction of G. Arthur Depew, enlivened the evening, and Swart Bros., of the Cadillac, catered to the wants of the visitors. The receiving party in the Probate Court Room consisted of the following members of the Bench and Bar:

Hon. Henry B. Brown, Associate Justice of the Supreme Court of the United States.

Gen. Russell A. Alger, United States Senator of Michigan.

Hon. Horace H. Lurton, Judge of the United States Circuit Court of Appeals.

Hon. William R. Day, Judge of the United States Circuit Court of Appeals, and formerly Secretary of State of the United States.

Hon. Henry H. Swan, Judge of the District Court of the United States.

Hon. George P. Wanty, Judge of the District Court of the United States.

Hon. James L. Blair, St. Louis, Missouri.

Hon. James M. Gibson, K. C., Attorney-General of the Province of Ontario.

Hon. Frank A. Hooker, Chief Justice, Supreme Court of Michigan.

Hon. Joseph B. Moore, Justice, Supreme Court of Michigan.

Hon. Claudius B. Grant, Justice, Supreme Court of Michigan.

Hon. Robert M. Montgomery, Justice, Supreme Court of Michigan.

Hon. John B. Corliss, Representative in Congress.

Hon. Horace M. Oren, Attorney-General of Michigan.

Harry B. Hutchins, LL.D., Dean of the Law Department of the University of Michigan.

Hon. Lawrence Maxwell, Jr., Cincinnati.

Hon. William L. Carpenter,
Hon. Robert E. Frazer,
Hon. Morse Rohnert,
Hon. George S. Hosmer,
Hon. Flavius L. Brooke,
Hon. Joseph W. Donovan,
Judges of the Circuit Court for the County of Wayne.

Hon. Edgar O. Durfee, Judge of Probate, Wayne County.

Hon. Alfred J. Murphy,
Hon. James Phelan,
Judges of the Recorder's Court of Detroit.

The Court Room was thronged throughout the evening, chiefly with members of the Bar from Detroit and vicinity, thus closing with a thoroughly representative gathering a day of extremely interesting and significant exercises.


SEAL OF THE CIRCUIT COURT OF WAYNE COUNTY MICHIGAN